

February 17, 2009

**VIA ELECTRONIC FILING**

Ms. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation  
Docket Nos. RR06-1-016/017, RR07-1-004, RR07-2-004, RR07-3-004/005,  
RR07-4-004, RR07-5-005, RR07-6-004, RR07-7-004/005, RR07-8-004/005  
Compliance Filing of the North American Electric Reliability Corporation  
In Response to December 19, 2008 Order**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits this "Compliance Filing of the North American Electric Reliability Corporation in Response to December 19, 2008 Order" in the above-listed dockets..

NERC's filing consists of: (1) this transmittal letter, (2) the narrative compliance filing following this letter, and (3) Attachments 1 through 6.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride  
Owen E. MacBride

Attorney for North American Electric  
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**UNITED STATES OF AMERICA**  
before the  
**FEDERAL ENERGY REGULATORY COMMISSION**

<b>North American Electric Reliability Corporation</b>	<b>Docket Nos. RR06-1-016 and RR06-1-017</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT</b>	<b>Docket No. RR07-1-004</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization</b>	<b>Docket No. RR07-2-004</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and Northeast Power Coordinating Council, Inc.</b>	<b>Docket Nos. RR07-3-004 and RR07-3-005</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and ReliabilityFirst Corporation</b>	<b>Docket No. RR07-4-004</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and SERC Reliability Corporation</b>	<b>Docket No. RR07-5-005</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and Southwest Power Pool, Inc.</b>	<b>Docket No. RR07-6-004</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and Western Electricity Coordinating Council</b>	<b>Docket Nos. RR07-7-004 and RR07-7-005</b>
<b>Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council.</b>	<b>Docket Nos. RR07-8-004 and RR07-8-005</b>

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

**February 17, 2009**

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## List of Attachments

**Attachment 1** – Revised Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure (**Attachments 1A and 1B** – clean and redlined versions)

**Attachment 2** – Amendments to the NERC Rules of Procedure (**Attachments 2A and 2B** – clean and redlined versions of the NERC ROP)

**Attachment 3** – Revised Amended and Restated Delegation Agreement between NERC and Florida Reliability Coordinating Council (**Attachment 3A** – clean versions of revised Delegation Agreement – and **Attachment 3B** – redlined versions of revised FRCC Bylaws and revised Exhibit D to Delegation Agreement including revised FRCC Compliance Monitoring and Enforcement Program)

**Attachment 4** – Revised Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. (**Attachment 4A** – clean version of revised Delegation Agreement – and **Attachment 4B** – redlined version of revised Exhibit D to Delegation Agreement) and **Attachment 4C**, clean and redlined versions of revised Scope of Work document for NPCC Compliance Committee

**Attachment 5** – Revised Amended and Restated Delegation Agreement between NERC and ReliabilityFirst Corporation (**Attachment 5A** – clean version of revised Delegation Agreement – and **Attachment 5B** – redlined version of revised ReliabilityFirst Compliance Monitoring and Enforcement Program and Hearing Procedures)

**Attachment 6** – Revised Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council (**Attachment 6A** – clean version of revised Delegation Agreement – and **Attachment 6B** – redlined version of revised Exhibit D to Delegation Agreement)

## I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) hereby submits its compliance filing in response to the Commission’s December 19, 2008 Order in Docket Nos. RR06-1-016 and 017, RR07-1-004, RR07-2-004, RR07-3-004 and 005, RR07-4-004, RR07-5-005, RR07-6-004, RR07-7-004 and 005, and RR07-8-004 and 005.<sup>1</sup> In response to and compliance with the directives in the December 19 Order, NERC is submitting with this compliance filing a revised NERC uniform Compliance Monitoring and Enforcement Program document (“CMEP”) including revised Attachment 2, Hearing Procedures<sup>2</sup>; certain revisions to the NERC Rules of Procedure (“ROP”)<sup>3</sup>; and (as discussed in more detail herein) revised Amended and Restated Delegation Agreements with certain of the eight Regional Entities.<sup>4</sup> Specifically, the following documents are being submitted with this filing:<sup>5</sup>

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<sup>1</sup> *Order Accepting Compliance Filings, Subject to Conditions*, 125 FERC ¶ 61,330 (December 19, 2008) (“December 19 Order”).

<sup>2</sup> The NERC CMEP is Attachment 4C to the NERC Rules of Procedure.

<sup>3</sup> The revisions to the NERC ROP submitted with this filing are all to provisions in Section 400.

<sup>4</sup> The eight Regional Entities are Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization (MRO), Northeast Power Coordinating Council, Inc. (NPCC), ReliabilityFirst Corporation (ReliabilityFirst), SERC Reliability Corporation (SERC), Southwest Power Pool Regional Entity (SPP RE), Texas Regional Entity (Texas RE), a division of Electric Reliability Council of Texas (ERCOT), and Western Electricity Coordinating Council (WECC).

<sup>5</sup> The redlined versions of the revised uniform CMEP and Hearing Procedures, the revised NERC ROP, and the revised individual delegation agreements with Regional Entities, are against the versions that were filed with the Commission on July 21, 2008 (*Compliance Filing of the North American Electric Reliability Corporation in Response to March 21, 2008 Order* (“July 21 Compliance Filing”)) and were the subject of the December 19 Order, with the following exceptions: (1) The NERC ROP in **Attachment 2** include the amendments to Section 1600 that were filed with the Commission on May 16, 2008 and approved by Order issued August 13, 2008 in Docket Nos. RM06-16-000 and RR08-1-002. (2) The ReliabilityFirst Bylaws included in Exhibit B to its Delegation Agreement in **Attachment 5A** include the Bylaws amendments that were separately filed on August 28, 2008 and approved by the Commission on November 25, 2008 in Docket RR08-7-008. (3) Exhibit E to the WECC Delegation Agreement in

- **Attachment 1** – Revised uniform Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC ROP (**Attachments 1A and 1B** – clean and redlined versions).
- **Attachment 2** – Amended NERC Rules of Procedure (**Attachments 2A and 2B** – clean and redlined versions of the amended NERC Rules of Procedure).
- **Attachment 3** – Revised Amended and Restated Delegation Agreement between NERC and Florida Reliability Coordinating Council (**Attachment 3A** – clean versions of revised Delegation Agreement – and **Attachment 3B** – redlined versions of revised FRCC Bylaws and revised Exhibit D to Delegation Agreement including revised FRCC Compliance Monitoring and Enforcement Program).
- **Attachment 4** – Revised Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. (**Attachment 4A** – clean version of revised Delegation Agreement – and **Attachment 4B** – redlined version of revised Exhibit D to Delegation Agreement) and **Attachment 4C**, clean and redlined versions of revised Scope of Work document for NPCC Compliance Committee.
- **Attachment 5** – Revised Amended and Restated Delegation Agreement between NERC and ReliabilityFirst Corporation (**Attachment 5A** – clean version of revised Delegation Agreement –and **Attachment 5B** – redlined version of revised ReliabilityFirst Compliance Monitoring and Enforcement Program and Hearing Procedures).
- **Attachment 6** – Revised Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council (**Attachment 6A** – clean version of revised Delegation Agreement – and **Attachment 6B** – redlined version of revised Exhibit D to Delegation Agreement).

**Attachments 3 through 6** each includes a letter from the President, Chief Executive Officer or other executive of the Regional Entity stating that the Regional Entity is prepared to execute the revised delegation agreement upon receipt of Commission approval.

In the redlined versions of the revised NERC uniform CMEP and Hearing Procedures, and the amendments to the NERC ROP, following each redlined revision, the paragraph number

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**Attachment 6A** includes the amendments that were separately filed with the Commission on September 30, 2008 and approved by the Commission in the December 19 Order (*see* PP 11 and 122).

of the December 19 Order that the revision is being made in response to is shown in brackets and highlighted.

The revised NERC uniform CMEP and Hearing Procedures, the amendments to the NERC ROP, and the revisions to the individual delegation agreements between NERC and certain Regional Entities (including, where applicable in response to the December 19 Order, the revised bylaws and CMEP and hearing procedures of certain Regional Entities that are attachments to Exhibits B and D, respectively, of the delegation agreements with those Regional Entities), were provided to the NERC Member Representatives Committee (MRC) and to the NERC Board of Trustees on January 30, 2009, and were also posted on the NERC website. The revised documents were discussed at meetings of the MRC and the NERC Board on February 9-10, 2009, and approved by the NERC Board at its meeting on February 10, 2009.

## **II. NOTICES AND COMMUNICATIONS**

Notices and communications with respect to this filing may be addressed to:

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### **III. RESPONSES TO SPECIFIC DIRECTIVES IN DECEMBER 19 ORDER**

#### **A. Directives Concerning the NERC CMEP and CMEP Attachment 2 Hearing Procedures**

In addition to the changes to the uniform CMEP and Hearing Procedures required by the December 19 Order, as described below, NERC has made one non-substantive change to P 1.5.1 of the Hearing Procedures. This paragraph previously contained provisions on waiver of time limits in the hearing process. In response to a directive in the Commission's March 21, 2008 Order<sup>6</sup>, the text of P 1.5.1 was deleted, but to avoid the need to renumber paragraphs and change cross-references throughout the Hearing Procedures, the text of P 1.5.1 was replaced with "[Intentionally left blank]." In the revised Hearing Procedures being submitted in **Attachment 1**, the former title of P 1.5.1 ("Waiver of Time Limits") has been deleted.

#### **December 19 Order, P 14 footnote 11:**

Specifically, we require NERC to substitute the term "Generally Accepted Auditing Standards" in place of the term "Generally Accepted Accounting Standards," at CMEP section 3.1. In addition, with respect to the hearing procedures in Attachment 2 to the *pro forma* CMEP, we direct that NERC's proposed addition to paragraph 1.5.7(c) (stating that "[a] list of withheld documents shall also be provided by any other Participant required to produce documents, at the time the documents are required to be produced") be transferred, along with any conforming changes, as may be required, from paragraph 1.5.7(c), a provision which applies to documents in the possession of compliance staff, to paragraph 1.5.8, a more appropriate provision addressing "other discovery procedures." We likewise direct that NERC move to paragraph 1.5.8 references NERC proposes to insert into paragraph 1.5.7(g) to procedures relating to documents that a participant other than compliance staff fails to produce.

#### **NERC Response:**

In the first paragraph of CMEP §3.1, "Generally Accepted Accounting Standards" has been replaced with "Generally Accepted Auditing Standards."

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<sup>6</sup> *Order Addressing Revised Delegation Agreements*, 122 FERC ¶ 61,245 (2008) ("March 21 Order"), at P 102.

In P 1.5.7(c) of the Hearing Procedures, the following sentence has been deleted: “A list of withheld documents shall also be provided by any other participant required to produce documents, at the time the documents are required to be produced.” In P 1.5.7(g), the reference to “or a document required to be produced by any other Participant is not produced to the Respondent” and associated references later in the paragraph have also been deleted. These provisions have been moved to P 1.5.8, where they are now reflected in new subparagraphs (g) and (h). In addition, corresponding changes to the cross-references to P 1.5.7 have been made in subparagraph (a) of P 1.5.8.

**1. Notice of Compliance Violation Investigations and Cross-Border Disclosure of non-Public Compliance Information (CMEP, Sections 2.0, 3.1, 3.4, 5.1, 5.6 and 8.0)**

**December 19 Order, P 30:**

30. NERC properly includes in the description of its proposed notices the nature of the U.S.–related compliance information NERC would disclose to a Canadian or Mexican reliability authority and the procedures NERC would use to ensure that its disclosure complies with section 39.7(b)(4) of our regulations. In this regard, we require that NERC identify in these notices each particular Applicable Governmental Authority to which it proposes to disclose this information and the specific procedures for protecting from public disclosure any non-public compliance information that would be transferred. Moreover, our acceptance of NERC’s amendments to section 3.4 does not constitute our prior permission for NERC to transfer information obtained in investigations about U.S. entities to Canadian or Mexican reliability authorities. We note, in this regard, that NERC has not yet explained how it would protect from public disclosure non-public U.S. compliance information subject to section 39.7(b)(4). We require NERC to submit this explanation in its compliance filing.

**NERC Response:**

In the fourth paragraph of CMEP §2.0, the following sentence has been added: “In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure

any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities.” In addition, a revision responsive to the directive in P 30 has been made in the fourth paragraph of CMEP §3.4: (“NERC’s notice to FERC shall identify the other Applicable Governmental Authority . . .”). However, by use of the phrase “pursuant to any provision of this Compliance Program” in the sentence that has been added to CMEP §2.0, NERC intends for the added sentence to be applicable to the corresponding provisions in CMEP §§ 3.1, 3.4, 5.1, 5.6 and 8.0.<sup>7</sup>

With respect to the Commission’s request for an explanation as to how non-public U.S. compliance information subject to 18 C.F.R. §39.7(b)(4) that is provided to Applicable Governmental Authorities in Canada and Mexico would be protected, each of the Applicable Governmental Authorities to which NERC might have a need to submit non-public U.S. compliance information subject to 18 C.F.R. §39.7(b)(4) has provisions for the submission of confidential information comparable to §388.112 of the Commission’s regulations.<sup>8</sup> NERC will make use of those provisions when submitting any such information to other Applicable Governmental Authorities. As stated in the text that has been added to CMEP §2.0, any request NERC submits to the Commission requesting permission to disclose such information to another Applicable Governmental Authority will identify “the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities.”

NERC will also continue to support the development of procedures between the Commission and other Applicable Governmental Authorities with respect to the receipt by one

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<sup>7</sup> “Compliance Program” is defined in CMEP §1.0 as the Compliance Monitoring and Enforcement Program embodied in Appendix 4C to the NERC ROP.

<sup>8</sup> 18 C.F.R. §388.112.

Applicable Governmental Authority of non-public compliance information regarding an entity that is subject to the jurisdiction of another Applicable Governmental Authority. NERC appreciates that the Commission committed to the development of such procedures in the March 21 Order (at P 44) and renewed that commitment in the December 19 Order (at P 28). On December 4, 2008, NERC received a letter jointly signed by Commission staff and the staff of the Manitoba Department of Science, Technology, Energy and Mines that set out acknowledgements and understandings with respect to cross-border information related to the September 18, 2007 disturbance within the MRO footprint. That letter was very useful in dealing with the information exchange issues in that matter, and NERC would support the expansion of that or analogous approaches to deal with potential cross-border information exchanges issues.

**December 19 Order, P 32:**

32. We note that the FPA and Part 1b of the Commission's regulations, not the CMEP, govern the procedures for an investigation that the Commission or its staff may commence into a possible violation of a Reliability Standard. Such an investigation would not necessarily fit within the CMEP's definition of a Compliance Violation Investigation. Therefore, we direct NERC to substitute "investigation" for "Compliance Violation Investigation" when NERC refers to a Commission investigation in section 3.4.

**NERC Response:**

The following sentence has been added at the start of what will now be the fourth paragraph of CMEP §3.4:

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein.

Additionally, throughout CMEP §3.4, revisions have been made such that the term “Compliance Violation Investigation” is used whenever referring to a Compliance Violation Investigation initiated by NERC or a Regional Entity (Compliance Enforcement Authority); and the term “investigation” is used whenever referring to an investigation initiated by the Commission or another Applicable Governmental Authority.

**December 19 Order, P 35:**

35. We observe that, unlike section 3.4 (which relates to investigations), revised section 2.0 does not require notice to the Commission or Canadian and Mexican authorities of specific CMEP compliance or enforcement activities that could trigger disclosure of non-public compliance information. Rather, revised section 2.0 would allow NERC to make, on an ongoing basis, international transfers of compliance-related information it obtains pursuant to the CMEP, if the conditions set forth in section 2.0 for these transfers are met. Our acceptance of revised section 2.0 does not constitute our prior permission for NERC to transfer non-public compliance information about U.S. entities to foreign reliability authorities, because NERC has not yet explained how it would protect from public disclosure non-public U.S. compliance information subject to section 39.7(b)(4). We require NERC to submit this explanation in its compliance filing. We observe that revised section 2.0 does not prohibit NERC’s cross-border transfer of information that is not directly related to a specific Registered Entity’s compliance with a requirement of a Reliability Standard.

**NERC Response:**

NERC’s explanation of how non-public U.S. compliance information subject to 18 C.F.R. §39.7(b)(4) that is provided to Applicable Governmental Authorities in Canada or Mexico would be protected from public disclosure, is provided in the response to P 30, above.

To expressly incorporate the clarification in the last sentence of P 35, NERC has added the following sentence to the fourth paragraph of CMEP §2.0: “The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity’s compliance with a requirement of a Reliability Standard.”

## 2. Mitigation of Violations (CMEP, Sections 6.4 and 6.5)

### December 19 Order, P 50:

50. However, we agree with TANC that a Registered Entity that submits a mitigation plan should receive some certainty about the time period for the plan's initial consideration. Accordingly, we direct NERC to amend the first paragraph of section 6.5 to provide that if a compliance enforcement authority extends the period for initial review of a mitigation plan, it must, within 30 days of the date of receipt of the mitigation plan: (i) notify the Registered Entity (and NERC, if NERC is not itself acting as the compliance enforcement authority) that the period has been extended; and (ii) identify the date by which it will complete review of the plan. This notice must also state that, by the latter date, if the compliance enforcement authority has not issued a written notice as to whether it accepts or rejects the plan, NERC's review of the plan will be extended further or the plan will be deemed accepted.

### NERC Response:

The underscored text shown below has been added following the first sentence of CMEP

§6.5, so that the paragraph now reads as follows:

Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

### December 19 Order, P 51:

51. . . . With the revision we direct to the first paragraph of section 6.5, this section will provide that, if a mitigation plan is approved by a Regional Entity, the Regional Entity will submit a mitigation plan to NERC for review by a specified date. To provide specific notice to a Registered Entity that a Regional Entity has submitted an approved mitigation plan to NERC for review, we direct NERC to revise the first sentence of the second paragraph to state that Regional Entities will notify NERC and an affected Registered Entity of acceptance of a mitigation plan.

**NERC Response:**

The first sentence of what is now the third paragraph (formerly the second paragraph) of CMEP §6.5 has been revised as follows: “Regional Entities will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC.”<sup>9</sup>

**December 19 Order, P 52:**

52. [W]e agree with TANC that NERC should notify the Regional Entity and the Registered Entity at the same time as to whether NERC has accepted or rejected a mitigation plan that the Regional Entity approved. Accordingly, we direct NERC to so amend the second paragraph of section 6.5.

**NERC Response:**

The second sentence of what is now the third paragraph (formerly the second paragraph) of CMEP §6.5 has been revised to provide that NERC will notify both the Regional Entity and the Registered Entity as to whether NERC has approved or disapproved the Mitigation Plan that the Regional Entity had approved.

**December 19 Order, P 54:**

54. [W]e direct NERC to revise section 6.5 to include the clarification requested by TAPS, and supported by NERC, that “[t]he Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC’s disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.”

**NERC Response:**

The quoted sentence has been added to the end of the third paragraph of CMEP §6.5.

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<sup>9</sup> Due to the lengthy textual additions to CMEP §6.5 in response to PP 50, 54 and 55, as described herein, §6.5, which was previously two paragraphs, has been split into four paragraphs.

**December 19 Order, P 55:**

55. We accept NERC's proposed sentence at the second paragraph of section 6.5 stating that NERC may publicly post a previously non-public mitigation plan as part of the posting of a confirmed violation. However, NERC's proposed language fails to mention another circumstance in which a mitigation plan may be made public. The Commission previously stated that it could determine on its own motion to review settlements into which Registered Entities enter with respect to alleged violations of reliability standards.<sup>26</sup> A settlement in which a Registered Entity neither admits nor denies that it violated a Reliability Standard is not a "Confirmed Violation," as defined in CMEP section 1.1.9. The language NERC proposes to insert into the second paragraph of section 6.5 does not address such settlements. If a mitigation plan is relevant to such a settlement, NERC should publicly post it at the same time that NERC files with the Commission a Notice of Alleged Violation applicable to the settlement. Accordingly, we direct NERC to amend the second paragraph of section 6.5 and any other relevant CMEP provisions to so provide.<sup>27</sup>

<sup>26</sup> *Review of Notices of Penalty for Violations of Reliability Standards*, 123 FERC ¶ 61,046, at P 17 (2008).

<sup>27</sup> We also require NERC to revise CMEP figure 6.1 to conform to the section 6.5 revisions directed herein.

**NERC Response:**

The fourth paragraph of CMEP §6.5 has been revised as follows:

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall ~~may subsequently~~ publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part of the public posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard in accordance with Section 5.4.

In addition, the second and third sentences of the fourth paragraph of CMEP §5.4,

Settlement Process, have been revised as follows:

NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement.



Finally, Figure 6.1 of the uniform CMEP has been revised to be consistent with revised CMEP §6.5.

**December 19 Order, P 56:**

56. . . . [B]ecause NERC intends to track the provisions of section 6.5 in the NERC Rules of Procedure, we direct NERC to submit in its compliance filing amendments to the NERC Rules of Procedure to parallel the revisions we direct in section 6.5.

**NERC Response:**

**Attachment 2** contains a revised version of the NERC ROP. Revisions have been made to the following sections of the ROP to be consistent with the revisions to CMEP §6.5: 403.10.4, 403.18, and 408.6.3. ROP §403.18 is the principal section in which revisions have been made to conform to the revisions to CMEP §6.5, and now addresses: (i) the procedure and notice requirements for a Regional Entity to extend the period for its review of a Mitigation Plan (see the response to P 50 above); (ii) the requirement that the Regional Entity will notify both NERC and the Registered Entity when the Regional Entity accepts the Registered Entity's proposed Mitigation Plan (see the response to P 51 above); (iii) the requirement that NERC will notify both the Regional Entity and the Registered Entity as to whether NERC has approved or disapproved a Mitigation Plan (see the response to P 52 above); and (iv) public posting of a Mitigation Plan by NERC as part of the posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard (see response to P 55 above).

NERC notes that while Section 400 of the ROP and the uniform CMEP (Appendix 4C to the ROP) must of course be consistent, it is not intended that they be identical. The uniform CMEP is the more detailed document. Therefore, not every provision in the uniform CMEP will (or should) have a counterpart provision in Section 400 of the ROP.

**December 19 Order, P 57:**

57. Finally, we agree with TANC that Regional Entity compliance forms, such as the self-reporting form and self-certification form described by TANC, must be consistent with the explicit provisions of the CMEP.

**NERC Response:**

NERC has instructed the Regional Entities that all Regional Entity compliance forms must be consistent with the explicit provisions of the CMEP, as approved for the Regional Entity.

**3. Hearing Requests (CMEP Attachment 2, Paragraph 1.3.1)**

**December 19 Order, P 60:**

60. . . . Paragraph 1.3.1, as filed, does not address the election of hearing procedures in the context of multiple respondents. In this instance, the request for a full hearing made by one or more respondent must be honored. Similarly, where all respondents have requested the applicability of the shortened procedure, the full procedure may also be requested through a responsive pleading submitted by the Regional Entity compliance staff. We require NERC to include these clarifications in the text of paragraph 1.3.1.

**NERC Response:**

The following revisions have been made in the third paragraph of P 1.3.1 of the Hearing Procedures, beginning with the second sentence of that paragraph:

If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent) requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

#### **4. Confidentiality Agreements (Paragraph 1.5.6)**

##### **December 19 Order, P 65:**

65. An expert, however, may be required to disclose information obtained in the proceeding to participants and to other experts involved in the proceeding by way of a discovery response or in testimony at the hearing. The objective of the confidentiality agreement, in this context, is to prohibit the *public* disclosure by the expert of this information except as may otherwise be permitted (for example, if the Commission were to determine that any hearing in the proceeding should be public or to authorize any other public disclosure by the expert). Accordingly, we direct NERC to revise paragraph 1.5.6 to state that such agreements will prohibit “unauthorized public disclosure” of information the expert obtains in connection with participation in the proceeding.

##### **NERC Response:**

The second sentence of P 1.5.6 of the Hearing Procedures has been revised as follows:

Any expert utilized in either capacity shall sign an agreement evidencing the expert’s understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert’s participation in the proceeding is prohibited.

#### **5. Documents to be Made Available for Inspection and Copying (Paragraph 1.5.7(a))**

##### **December 19 Order, P 68:**

68. . . . The March 21 Order found that paragraph 1.5.7(a)(1) was vague as it relates to the compliance staff’s obligation to make requested documents available “[u]nless otherwise provided by this Rule.” The Commission’s finding contemplated, in response, a revision to paragraph 1.5.7(a)(1) that would cure this ambiguity, i.e., an express reference, or cross-reference, to those provisions in NERC’s hearing procedures (e.g., paragraph 1.5.7(b)) that permit compliance staff to withhold a given document from production. NERC’s proposed revision, which refers only to an order of the hearing officer, fails to cure this ambiguity. Moreover, NERC’s proposed requirement that an order from the hearing officer operate as a precondition to compliance staff’s ability to withhold a document from production would unreasonably limit compliance staff’s ability legitimately to withhold a given document. Accordingly, we require that paragraph 1.5.7(a)(1) cross-reference paragraph 1.5.7(b) as the sole basis pursuant to which compliance staff will be authorized to withhold documents from production.

##### **NERC Response:**

The following revisions have been made to P 1.5.7(a)(1) of the Hearing Procedures:

(1) At the beginning of subparagraph (a)(1), the text “Unless otherwise provided by order of the Hearing Officer or [HEARING BODY]” has been deleted (immediately preceding the text “Within five (5) days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings”).

(2) The following revision has been made to the last sentence in subparagraph (a)(1):

The sole bases pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7(b); provided, however, that the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff; and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

## **6. Discovery Procedures (Paragraph 1.5.8)**

### **December 19 Order, PP 71-73:**

71. . . . NERC’s proposed sub-part (c) to paragraph 1.5.8 assumes that neither NERC nor a regional entity possess a power to subpoena or compel the production of documents or testimony in a hearing. We disagree. While NERC may be correct as to the power to issue subpoenas that FPA section 307(b) grants to a member of the Commission or an officer designated by it,<sup>32</sup> the CMEP already authorizes NERC and regional entity compliance staff to compel information and testimony in a different context than a hearing. CMEP section 3.4.1, step 6, provides that during a compliance violation investigation a compliance enforcement authority’s compliance staff may require a Registered Entity to: (i) provide verification under oath of the Registered Entity’s responses to requests for documents and information and (ii) produce authorized representatives to provide testimony under oath concerning the matters under investigation.

<sup>32</sup> 16 U.S.C. § 825f(b) (2006).

72. A Registered Entity in the United States is subject to the Commission’s FPA section 215 jurisdiction and must comply with NERC’s rules, including the CMEP Attachment 2 hearing procedures.<sup>33</sup> Accordingly, if pursuant to the CMEP a compliance enforcement authority’s compliance staff possesses the power to compel evidence during an investigation with respect to Registered Entities, we see no legal impediment to the use by a hearing officer or a hearing body of that authority in appropriate circumstances to enable a participant to obtain documents or testimony from a Registered Entity that is not a participant in a particular proceeding.<sup>34</sup> We

further note that Rule 410(a) of the Commission's Rules of Practice and Procedure provides that a participant in a proceeding or a recipient of a subpoena issued by a Commission administrative law judge may provide a notice of objection or a motion to quash.<sup>35</sup> The Commission thereby provides an opportunity for an entity to object to a subpoena issued in a hearing. We likewise believe that a Registered Entity subject to an order to compel issued in a hearing should have the opportunity to object to such an order.

<sup>33</sup> 18 C.F.R. § 39.2(a)-(b) (2008). CMEP section 1.1.17 defines the term "Registered Entity" as "[a]n owner, operator or user of the Bulk-Power System or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry." The CMEP and its attachments are incorporated into the NERC Rules of Procedure at Appendix 4B.

<sup>34</sup> We note that the Financial Industry Regulatory Authority (FINRA), the self-regulatory organization associated with the Securities and Exchange Commission, has a Rule 8210 that authorizes a FINRA adjudicator or FINRA staff to require testimony or the production of documents in FINRA staff investigations and proceedings. *See* 73 *Federal Register* 57,174 (2008).

<sup>35</sup> 18 C.F.R. § 385.410(a) (2008).

73. Accordingly, we direct NERC to insert into paragraph 1.5.8 appropriate provisions relating to the issuance in a proceeding of orders to compel production of documents or testimony by a hearing officer or a hearing body to Registered Entities that are not participants in the proceeding, or to provide a further explanation of NERC's position that it and the Regional Entities lack such authority.<sup>36</sup>

<sup>36</sup> We do not address at this time the issue of the authority of a hearing officer or a hearing body to compel the production of documents or testimony from a person or entity that is not a Registered Entity. We note that in the March 21 Order, at P 125, the Commission stated that it would address matters relating to compulsory discovery on a case-by-case basis, using its existing authority to compel the production of documents and testimony, as necessary.

#### **NERC Response:**

P 1.5.8 of the Hearing Procedures has been revised to add to the discovery procedures that may be used in the hearing process, "requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing." P 1.5.8, subparagraph (c), has been revised to include the following sentence:

The Hearing Officer and the [HEARING BODY] have the authority to issue orders to compel the appearance by or production of documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant.<sup>10</sup>

Further, P 1.5.8 has been revised to add Rules 409 and 510(e) of the Commission's Rules of Practice and Procedure<sup>11</sup>, both of which contain provisions relating to "subpoenas," to the Commission Rules of Practice and Procedure that are incorporated by reference into the Hearing Procedures. However, as stated in new subparagraph (d), references to "subpoena" in the incorporated Commission Rules of Practice and Procedure shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony. Additionally, a sentence has been added to subparagraph (c) to state that the Hearing Officer and Hearing Body do not have authority to require a U.S. marshal or deputy marshal to serve an order to produce or provide documents, information or testimony (as is otherwise provided for with respect to subpoenas in Commission Rule 409). Other conforming changes and revisions to cross-references have been made to P 1.5.8, as marked on **Attachment 1B**.

A number of associated revisions have been made to other paragraphs of the Hearing Procedures.

- In P 1.4.2, a revision has been made to specify that the Hearing Officer has the power "to supervise and issue orders concerning discovery."
- A paragraph has been added at the end of P 1.4.4, "Interlocutory Review," to specify that a non-Participant that has been ordered by the Hearing Officer pursuant to P 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain relief from that order through filing objections or a motion to quash, shall be entitled to seek interlocutory review from the Hearing Body. Absent this addition, P 1.4.4 makes interlocutory review available only to a

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<sup>10</sup> "Person" is defined in P 1.1.5 of the Hearing Procedures as "any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, and any other legal entity."

<sup>11</sup> 18 C.F.R. §385.409 and §385.510(e).

“Participant” (as defined in P 1.1.5), and thus a non-Participant ordered by the Hearing Officer to produce or provide documents, information or testimony would be unable to seek interlocutory review. The non-Participant may seek interlocutory review with respect to (i) whether the non-Participant is within the class of Persons subject to orders to produce or provide documents, information or testimony pursuant to P 1.5.8, and (ii) the reasonableness of the Hearing Officer’s order to produce or provide documents, information or testimony.

- Appropriate references to documents or testimony to be produced or provided by a non-Participant pursuant to a Hearing Officer order, or other revisions, have been made in P 1.5.9 (Pre-Evidentiary Hearing Submission of Testimony and Evidence), P 1.6.5 (Exhibits) and P 1.6.7 (Admission of Evidence). These revisions (i) recognize that a Participant whose evidence includes documents or testimony to be produced or provided at the hearing by a non-Participant pursuant to a Hearing Officer order cannot necessarily be expected to serve that evidence in advance of the hearing, in the form of an exhibit; and (ii) allow a non-Participant ordered to produce or provide documents, information or testimony to request a protective order to protect the confidential, proprietary or trade secret nature of the documents, information or testimony (P 1.59(a) and (c)).
- A sentence has been added to P 1.6.16, Examination of Adverse Participant, to specify that “Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.”

## **B. Regional Entity Delegation Agreement Revisions**

### **1. Texas RE Delegation Agreement**

No revisions to the Texas RE Delegation Agreement were directed in the December 19 Order.

### **2. MRO Delegation Agreement**

No revisions to the MRO Delegation Agreement were directed in the December 19 Order.

### **3. NPCC Delegation Agreement**

#### **December 19 Order, P 89:**

89. . . . With respect to NPCC’s proposed modifications to the NPCC Exhibit D, at section 2.0, regarding the voting requirements applicable to the NPCC hearing body, it remains unclear

whether the corollary requirement that no two stakeholder sectors may control, and no single stakeholder sector may veto, a decision by the NPCC board or any of its committees (a requirement set forth under the NPCC Delegation Agreement, at section 2(a)(i)), will apply to the compliance committee's actions as a hearing body. Accordingly, we direct NPCC to clarify whether this requirement applies to the actions of the compliance committee as a hearing body or justify why it should not. We observe that sections VII.E and VIII of the NPCC bylaws are unclear as to whether the compliance committee, when acting as the hearing body, will render its decisions by a majority of the votes cast by a quorum. To that extent, the NPCC bylaws may be inconsistent with section 2.0 of the NPCC Exhibit D. Accordingly, we require NPCC to amend its bylaws to remove this ambiguity.

**NERC – NPCC Response:**

Exhibit D, §2.0 to the NERC – NPCC Delegation Agreement has been revised to specify that the NPCC Hearing Body will consist of five members, plus two alternates, from the NPCC Compliance Committee (CC), rather than being the NPCC CC as a whole. Each member of the Hearing Body will come from a different NPCC voting sector. The Hearing Body will always conduct business with five members, *i.e.*, five members will be a quorum. (If an appointed member is unavailable, an alternate will substitute.) The Hearing Body will resolve issues based on majority vote (three votes of five). Following is the pertinent revised text of Exhibit D, §2.0:

The NPCC Compliance Committee, a committee reporting to the NPCC Board, will be responsible for impaneling a Hearing Body, when required. This Hearing Body will consist of five voting members of the Compliance Committee plus two alternates and business will always be conducted by five voting members as described in the *NPCC Hearing Procedure* (each member of the Hearing Body will be from a different voting sector). An independent Hearing Officer, who is not a member of the Compliance Committee, the NPCC Board, or the NPCC Staff will conduct the hearing. Committee members who represent the Registered Entity involved in the Hearing cannot participate on the Hearing Body. The Hearing Body will utilize a simple majority vote to resolve issues. This voting rule, along with the structure of the Hearing Body, fully supports the requirement that no two stakeholder sectors may control, and no single stakeholder sector may veto, a matter before the Hearing Body.

Similar changes have been made to the Scope of Work document for the NPCC CC. Therefore, since it would take three votes to issue a decision by the five-member Hearing Body, no single stakeholder sector could veto, and no two stakeholder sectors could control, a matter before the



NPCC Hearing Body. Revised Exhibit D to the NERC-NPCC Delegation Agreement and the revised Scope of Work document for the NPCC CC are included in **Attachment 4**. Because NPCC has been able to resolve the Commission’s concerns in P 89 of the December 19 Order by amending these documents, no amendment to the NPCC Bylaws is necessary.<sup>12</sup>

**December 19 Order, P 90:**

90. With respect to NERC’s and NPCC’s proposed revision to NPCC Exhibit D, section 3.0, we clarify that NPCC may use spot checks in the circumstances identified in CMEP section 3.3, i.e., at random or initiated in response to events, as described in Reliability Standards, operating problems or system events. With respect to the initiation of investigations, we clarify that while NPCC places this revision within a parenthetical in a provision of section 3.0 that focuses on how NPCC will handle an event analysis, the new language applies to the initiation of investigations of possible violations upon their discovery by any means. We also observe that NPCC’s revised section 3.0 refers to the review by NPCC compliance staff of “compliance submittals” and “compliance inputs” for possible violations. We find no indication in section 3.0 that NPCC compliance staff may review complaints submitted pursuant to CMEP section 3.8 for possible violations; however, we expect that NPCC compliance staff will review complaints as specified in section 3.8.

**NERC – NPCC Response:**

NERC and NPCC agree with the Commission’s clarifications and expectations as stated in P 90. To ensure that the Commission’s expectation expressed in the last sentence of P 90 is explicitly stated in Exhibit D to the NERC-NPCC Delegation Agreement, the first sentence of §3.0 of Exhibit D has been revised as follows:

NPCC Compliance Staff will review compliance submittals from Registered Entities related to Self-Certification; Self-Reporting; Exception Reporting; ~~and~~ Periodic Data Submittals and Complaints.

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<sup>12</sup> Section VII of the NPCC Bylaws state that the quorum and voting rules applicable to the NPCC Board shall also be applicable to any committees of the NPCC Board, unless otherwise determined by the Board. (Additionally, the NPCC Bylaws provide that each Board committee shall establish a charter or scope of work which the NPCC Board shall approve.) The NPCC Board has “otherwise determined” for the NPCC Hearing Body, through adopting the above-described changes to Exhibit D, §2.0 of the NERC – NPCC Delegation Agreement and to the Scope of Work document for the NPCC CC.

As stated in the balance of the first paragraph of §3.0, this review may lead to issuance of an Initial Notice of Alleged Violation followed by a Notice of Alleged Violation with Penalty or Sanction.

With respect to the Commission's statement in the first sentence of P 90, NERC and NPCC note that the fourth, fifth and sixth sentences of the fourth paragraph of amended §3.0 of Exhibit D state:

Spot checking may also be random or may be initiated in response to events, as described in the Reliability Standards or by operating problems or system events. Upon completion of the compliance staff review an assessment is made and the Registered Entity is notified of the outcome. In instances of identified non-compliance the results are processed as other compliance inputs.

**December 19 Order, P 91:**

91. NERC's and NPCC's proposed revision to NPCC Exhibit D, section 3.0 also characterizes the initial determination made by the NPCC compliance staff as a "Preliminary Notice of Violation," a reasonable description of a notice permitted under CMEP section 5.1 (i.e., a notice that need not be accompanied by a proposed penalty or sanction). However, because the term "Preliminary Notice of Alleged Violation" differs from the term used in CMEP section 5.1 (which refers to an initial notice of alleged violation), we direct NERC and NPCC to consider whether to amend NPCC's Exhibit D, section 3.0, CMEP section 5.1, or both, for purposes of consistency and clarity.

**NERC – NPCC Response:**

Exhibit D, §3.0 of the NERC – NPCC Delegation Agreement has been revised to replace the term "Preliminary Notice of Alleged Violation (PNOAV)" with "Initial Notice of Alleged Violation (INOAV)."

**December 19 Order, P 94:**

94. [W]e accept NPCC's proposed revision of its Exhibit D, section 3.0 on this issue, subject to the following directives. First, we require NERC and NPCC to amend section 3.0 to state that the consultation process is to be initiated only by compliance staff and that the process may not be used to determine appropriate proposals for penalties or sanctions for violations. Second, 30 days after the end of each calendar quarter, we require NERC and NPCC to submit non-public reports to the Commission staff on technical committee consultations during that calendar quarter that list: (i) the topic of each consultation initiated or continued during that quarter; (ii)

the date on which the consultation began and ended; (iii) the reason why NPCC staff initiated the consultation; (iv) the persons who participated in the consultation; and (v) the result of the consultation, if any. Finally, we require NERC and NPCC to submit a filing on or before June 30, 2010 that incorporates the results of these quarterly reports and proposes a schedule for the termination of the consultations or a detailed justification for their continuation.

#### **NERC – NPCC Response:**

On January 30, 2009, NERC and NPCC filed an initial report with the Commission covering the fourth quarter of 2008, as directed. NERC and NPCC will continue to file quarterly reports, as directed. NERC and NPCC will make the required filing by June 30, 2010, as specified in P 94.

#### **4. ReliabilityFirst Delegation Agreement**

No revisions to the ReliabilityFirst Delegation Agreement were directed in the December 19 Order. However, Exhibit D to the NERC – ReliabilityFirst Delegation Agreement includes the ReliabilityFirst CMEP and Hearing Procedures, which are generally consistent with the NERC uniform CMEP and Hearing Procedures. As shown in **Attachment 5**, the ReliabilityFirst CMEP and Hearing Procedures have been revised to implement changes to corresponding provisions of the NERC uniform CMEP and Hearing Procedures that are being revised in response to directives in the December 19 Order.

#### **5. SERC Delegation Agreement**

##### **December 19 Order, PP 101 – 102:**

101. The Commission accepts NERC's and SERC's changes to the SERC Delegation Agreement. With respect to SERC's designation of its board compliance committee, or a subset of it, as SERC's hearing body, we note that section 7.5 of the SERC bylaws provides that the board compliance committee may appoint *ad hoc* committees of technical experts to advise it on compliance or technical issues, among other things. Section 7.5 also provides that "[e]ach member (or another entity) that requests that the Compliance Committee review a compliance finding against it may request that an *ad hoc* committee be formed to assist the Compliance Committee in its review."

102. If a section 7.5 *ad hoc* committee is acting in an advisory capacity to the SERC hearing body, the members of that advisory panel must comply with the provisions of the SERC hearing procedures addressing this matter, including paragraphs 1.4.5 (addressing disqualification), 1.4.6 (relating in part to disclosure of information about technical advisors) and 1.4.7 (prohibiting *ex parte* communications).

**NERC – SERC Response:**

As provided in Exhibit D to the NERC-SERC Delegation Agreement, SERC has adopted the NERC uniform CMEP and Hearing Procedures without deviation. Therefore, the provisions of the uniform Hearing Procedures cited by the Commission in P 102 are already fully applicable to any *ad hoc* committee of technical experts appointed by the SERC Board pursuant to §7.5 of the SERC Bylaws to act as a technical advisor to a SERC Hearing Body.

**6. SPP RE Delegation Agreement**

**December 19 Order, PP 108-110:**

108. We accept NERC’s and SPP’s proposed changes to the SPP Delegation Agreement, subject to revision. While we accept NERC’s and SPP Regional Entity’s proposed changes to the SPP Regional Entity bylaws, it remains unclear to the Commission whether this new bylaw provision fully resolves the concerns set forth in the March 21 Order. NERC and SPP Regional Entity explain that the SPP Regional Entity allows open participation in its activities and SPP Regional Entity does not have membership. Thus, all interested entities may participate in matters such as the development of a regional Reliability Standard, or voting on a regional standard as part of the SPP Regional Ballot Body. However, other SPP Regional Entity functions and activities are conducted through the existing committees and structure of SPP Inc., i.e., the regional transmission organization.

109. For example, the SPP Inc. Market and Operations Committee appoints a standing SPP Inc. subcommittee or work group to serve as the Reliability Standards development team for developing a new or revised regional Reliability Standard. While it appears that other interested entities may join and participate in the Reliability Standards development team, the team is initially selected by a SPP Inc. committee. Likewise, once a draft regional Reliability Standard receives an affirmative vote by the SPP Regional Entity Ballot Body, the draft standard is then submitted to the SPP Inc. Market and Operations Committee and subsequently the SPP Inc. Board of Directors/Members Committee for advisory votes before reaching the SPP Regional Entity independent trustees for a final vote. While these votes are “advisory,” the Markets and Operation Committee and SPP Inc. Board of Directors/Members Committee also have the ability to “remand” a draft regional Reliability Standard back to the Reliability Standards development team for further consideration or even “terminate” the draft standard, albeit subject to notice to the SPP Regional Entity trustees with an opportunity to override such actions.<sup>52</sup>

<sup>52</sup> See SPP Regional Entity Standards Development Process Manual at section IV.

110. Thus, the SPP Markets and Operation Committee and SPP Board of Directors/Members Committee have the opportunity to significantly delay, if not terminate, a draft regional Reliability Standard after the SPP Regional Entity Ballot Body has affirmatively voted on the standard. Pursuant to the SPP Inc. bylaws, it appears that participation in the Market and Operations Committee and the SPP Inc. Board of Directors/Members Committee is limited to members of SPP Inc. Further, membership in SPP Inc. is subject to a \$6,000 annual membership fee and agreement to pay a significant exit fee. In these circumstances, it is not clear to the Commission whether the new bylaw provision generally assuring that participation in SPP Regional Entity activities is open to the public and does not require membership in SPP Inc. is consistent with other provisions of the SPP Inc. bylaws and the SPP Regional Entity Standards Development Process Manual that identify particular SPP Regional Entity functions and activities, some of which are discussed above, that are conducted by SPP Inc. membership-based committees. We direct NERC and SPP Regional Entity to provide in its compliance filing a further explanation on this matter. We preserve the right to take further action on this issue either in response to the compliance filing or, if appropriate, in the context of NERC's first performance assessment that is due at the three-year anniversary of its certification as the ERO.

**NERC – SPP RE Response:**

NERC and SPP RE submit that, upon review, the concerns expressed by the Commission in PP 108 – 100 are not well-founded. Any interested party may participate in activities related to SPP's Regional Entity functions, including the regional standards development process. No membership in SPP, Inc., is required to participate in the regional standards development process.

While the Markets and Operations Policy Committee (MOPC) makes the initial assignment of a SPP, Inc. subcommittee or work group to be the Standards Drafting Team (SDT) for a regional standard drafting project, this is an administrative function which is well-placed in the MOPC because the MOPC is in the best position to know which SPP organizational group has the appropriate technical expertise to serve as the SDT for a particular proposed standard. While the MOPC is a committee of the SPP, Inc. membership, all its meetings are open to attendance and participation by an interested party, and the meetings are adequately noticed to afford access to information regarding pending assignments for SDTs.

Although existing SPP, Inc. subcommittees and work groups are assigned to be SDTs, when an SPP, Inc. subcommittee or work group is serving in the capacity of a SDT, it must operate in accordance with SPP RE's Commission-approved SPP SDP Manual, which requires that all activities be open to any interested party.<sup>13</sup> All information concerning a proposed regional standard is available on the SPP RE website and via subscription email.<sup>14</sup> Any party that wants information regarding a proposed regional standard, participation on the SDT or pending discussions at SDT meetings has ready access to such information. As provided in the Standards Development Process Manual, the roles of the MOPC and of the SPP, Inc. Board and Members Committee (MC) are advisory only.<sup>15</sup> Further, the meetings of the MOPC, the MC and the SPP, Inc. Board are open to any interested party (not just to members of SPP, Inc.). Meeting information for both groups is posted on the SPP website in advance of the meeting, and includes agenda and background materials.<sup>16</sup> Participation in the meetings, which are held quarterly, is available either in person or by telephone, and any party is allowed to address either group.

Throughout the entire regional standards development process, information is provided to the SPP RE Trustees, who have the sole authority to approve a standard developed by the SDT

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<sup>13</sup> SPP Regional Entity Standards Development Process Manual (SPP SDP Manual) at 1, 10-11 and 12. The SPP SDP Manual provides that any entity with a direct and material interest in the bulk power system has a right to participate in the regional standards development process by (a) expressing a position and its basis, (b) having that position considered, (c) voting on a proposed regional reliability standard through a segment weighted balanced process, and (d) having the right to appeal.

<sup>14</sup> SPP SDP Manual at 11, 12 (meetings of the SDT are open to all interested parties and are posted on the SPP website at least 15 days in advance) and 13.

<sup>15</sup> SPP SDP Manual at 10 (SPP Board and MC provide "advisory votes" and "recommendations" to the SPP RE Trustees on reliability matters), 16 (MOPC vote on a standard is "advisory") and 17 (SPP Board/MC vote is "advisory").

<sup>16</sup> SPP SDP Manual at 16.

for submission to NERC.<sup>17</sup> The SPP RE Trustees are apprised of the status of any regional standards throughout the development process<sup>18</sup>, and have the authority to move forward with the standard at any point following approval by and submission from the SDT. The purpose of the presentations concerning the status at the SPP, Inc. Board/MC meetings is simply to afford an additional public opportunity for discussion and comment on a proposed regional standard.<sup>19</sup> These meetings provide forums where interested parties can obtain information on SPP activities. A report regarding the status of standards development at these meetings is an efficient use of stakeholder time and resources, as it obviates the need to schedule, host and attend a separate meeting for the sole purpose of reporting on the status of a regional standard under development.

Further, the reason either the MC or the SPP, Inc. Board might seek (through votes that are advisory only) a “remand” of a regional standard to the MOPC and then to the SDT is if the discussion at their public meetings indicated a need for reconsideration of some aspect of the standard. However, a requested “remand” by the MC or SPP, Inc. Board in no way impedes the SPP RE Trustees’ authority to proceed to submit the standard, as developed by the SDT, to NERC for approval. Further, even if a standard is remanded to the SDT, the SDT is not required to revise any component of the standard.

To date, SPP RE has engaged in limited regional standards development activity, and no proposed regional standard has moved through the entire process for submission to NERC.

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<sup>17</sup> SPP SDP Manual at 10 and 17 (SPP RE Trustees may approve a regional standard for submission to NERC even after receiving a negative report from the MOPC or the SPP Board/MC) and 18 (“Advisory votes of the MOPC and BOD/MC do not impact the RE Trustees’ authority to submit a Standard to NERC”).

<sup>18</sup> SPP SDP Manual at 10, 13, 14, 17.

<sup>19</sup> SPP SDP Manual at 10.

However, there have been no complaints or expressions of concern from non-SPP, Inc. members regarding their ability to participate in the SPP regional standards development process.

For these reasons, NERC and SPP believe no further revisions to the SPP, Inc. Bylaws or to the SPP RE Regional Standards Development Process are needed in response to the matters discussed in PP 108-110 of the December 19 Order.

**December 19 Order, P 111:**

111. With respect to SPP funding matters, we accept NERC and SPP's proposal to establish an account solely to receive and hold funding received from NERC pursuant to SPP's performance of statutory activities under the SPP Delegation Agreement. We also expect SPP to deposit any amounts received for statutory activities into the same account. However, we are not convinced that SPP's proposal to use a joint operating account to pay SPP's non-statutory and statutory expenses ensures that statutory funding will be kept separate from non-statutory funding. It is also unclear why SPP's statutory expenses cannot be paid from a separate account. Accordingly, we direct NERC and SPP to revise Exhibit E, section 5 to establish separate accounts for payment of statutory and non-statutory expenses.

**NERC – SPP RE Response:**

On January 21, 2009, SPP, Inc. filed a request for rehearing of the directive in P 111 that SPP be required to establish separate accounts for payment of statutory and non-statutory expenses. On February 13, 2009, SPP, Inc. filed a Motion for Stay of P 111. As of the date of this compliance filing, the Commission has not ruled on the request for rehearing.

**7. WECC Delegation Agreement**

**December 19 Order, PP 120 – 121:**

120. We accept NERC's and WECC's proposed changes to the WECC Delegation Agreement, subject to revision. With respect to the Commission's requirements regarding the availability of the attorney-client privilege and attorney work-product doctrine, we accept, in part, NERC and WECC's statement that no amendment of paragraph 1.4.1(b) of WECC hearing procedures is necessary to ensure that WECC compliance staff's obligation to produce evidence is subject to and limited by any applicable privilege. However, this statement appears to assume that the only privileges that could be asserted by WECC compliance staff are the attorney-client privilege or the attorney work-product doctrine. In contrast, the comparable provision of the *pro forma* hearing procedures, paragraph 1.5.7(b)(1)(A), is a more general statement that compliance staff may withhold a document from inspection and copying by a respondent if "the document is



privileged to staff or constitutes attorney work product of Staff's counsel." WECC's deletion of the former language of paragraph 1.4.1(b)(3), which would have served as a means for WECC enforcement staff to assert any other privilege that might apply, brings into question whether WECC's current version of paragraph 1.4.1(b) would recognize any other privilege that WECC compliance staff might successfully assert.<sup>59</sup>

<sup>59</sup> WECC's new section 1.4.1(b)(3) could protect from disclosure by WECC compliance staff certain documents containing confidential information. However, it is not clear that the definition of "confidential information" in section 1501(1) of NERC's Rules of Procedure would cover privileges that WECC compliance staff could assert. That definition does not refer explicitly to information in documents for which an evidentiary privilege is asserted. We also note that, while section 1.5.7(b)(1)(D) of the *pro forma* hearing procedures provides a hearing officer residual authority to grant leave to compliance staff to withhold documents that are not relevant, or otherwise for good cause shown, WECC's proposed hearing procedures do not include an analogous provision.

121. In addition, WECC's revisions to section 1.4.1(b) eliminate completely the concept codified in paragraph 1.5.7(b)(2) of the *pro forma* hearing procedures that, in the absence of an assertion of privilege, no circumstance that would otherwise protect a document from disclosure authorizes compliance staff to withhold exculpatory evidence contained in the document. Thus, WECC's revisions appear to be inconsistent with the *pro forma* hearing procedures on this matter. Our strong preference is for consistency in fundamental matters relating to compliance hearings before all Regional Entities and NERC. To resolve the inconsistencies discussed above with respect to the bases on which compliance staff may withhold or provide documents, we direct NERC and WECC to submit in their compliance filing a proposal to reconcile these matters.<sup>60</sup>

<sup>60</sup> Paragraph 1.4.2(3) of the WECC hearing procedures (addressing the power to compel testimony or the production of documents) is substantially identical to *pro forma* paragraph 1.5.8(c). As such, our rulings herein on *pro forma* paragraph 1.5.8(c) also apply to WECC paragraph 1.4.2(3).

#### **NERC – WECC Response:**

Several revisions have been made to the WECC Hearing Procedures in response to PP

120-121:

1. P 1.4.1(b)(1) has been revised as follows:

The following documents are not subject to disclosure: (1) Documents subject to a privilege available to the ~~attorney-client~~ Staff or constituting attorney work-product ~~privileges of Staff's counsel~~ (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);

2. The following subparagraph (4) has been added to the list of documents that WECC Compliance Staff is not required to disclose: “(4) Documents not relevant to the subject matter of the proceeding, or, upon order of the Adjudicatory Officer, for other good cause shown.” The corresponding NERC Hearing Procedures provision, P 1.5.7(b)(1)(D), allows Compliance Staff to withhold documents as not relevant or for other good cause shown upon the Hearing Officer granting leave to do so. The WECC provision in P 1.4.1(b)(4) also permits withholding of documents if not relevant or for other good cause shown, but would require an initial Adjudicatory Officer order only for the “good cause” exception and not where the documents are withheld on grounds of lack of relevance. The only difference between the NERC *pro forma* provision and the WECC provision relates to the timing of hearing officer involvement, because under either provision, the hearing officer will address the issue to the extent the relevance (or lack thereof) of the documents to be withheld is disputed. WECC seeks to conserve hearing officer resources and therefore prefers to permit the initial determination of relevance to be made by the Compliance Staff (similar to withholding of documents on grounds of privilege, non-disclosure of investigatory techniques, or violation of confidentiality obligations), with the Registered Entity having full recourse to a hearing officer determination where necessary. Because Staff must provide the Registered Entity with a list of withheld documents, at the time production is required (per the last paragraph of P 1.4.1(b) of the WECC Hearing Procedures), the Registered Entity will be able to bring before the Adjudicatory Officer any disputes over the withholding of documents by Staff on relevance grounds.

3. The following proviso has been added in P 1.4.1(b) following the list of documents that WECC Compliance Staff is not required to disclose:

Provided, however, that nothing in Subparagraphs 1.4.1(b)(2), (3), (4) authorizes Staff to withhold a document, or part thereof, that contains exculpatory evidence,

and nothing in Subparagraph (b)(1) requires Staff to withhold a document from disclosure.

This proviso conforms to P 1.5.7(b)(2) of the NERC Hearing Procedures.

4. P 1.4.2, Other Discovery Procedures, of the WECC Hearing Procedures has been revised consistent with the changes to P 1.5.8 of the NERC Hearing Procedures concerning the availability of orders of the Hearing Officer (Adjudicatory Officer in the WECC Hearing Procedures) to compel a Registered Entity that is not a Party to the hearing to produce or provide documents, information and testimony. Other revisions have been made to PP 1.3.6, 1.3.7 and 1.5.3 of the WECC Hearing Procedures to conform to the related changes to the corresponding provisions of the NERC Hearing Procedures on this topic.

In addition, as marked on the redlined revised Exhibit D to the NERC – WECC Delegation Agreement provided in **Attachment 6B**, other revisions have been made to the WECC CMEP and Hearing Procedures to conform to revisions made to corresponding provisions of the NERC uniform CMEP and Hearing Procedures in response to directives in the December 19 Order.

#### **8. FRCC Delegation Agreement**

In addition to the specific revisions to Exhibit D to the NERC-FRCC Delegation Agreement and the FRCC Bylaws in response to specific directives in PP 127 and 129 of the December 19 Order, as described below, revisions have been made to the FERC CMEP and Hearing Procedures (which are an attachment to Exhibit D to the NERC – FRCC Delegation Agreement) to conform to the revisions that have been made to the NERC uniform CMEP and Hearing Procedures in response to directives in the December 19 Order.

**December 19 Order, P 127:**

127. . . . With respect to FRCC's compliance committee review process, we expect each Regional Entity's compliance staff to be independent and technically competent. Thus, we are not persuaded that the compliance committee review process, as revised in Exhibit D, section 1.2, should be permanent. Further, if the process is to be limited to a review of how to comply with requirements of the Reliability Standards, as proposed, reviews should not relate to the development of proposals for a penalty or sanction for violations, as could be permitted under NERC's and FRCC's proposal. In addition, only FRCC compliance staff should initiate the review process, when it believes that a review is appropriate. We require NERC and FRCC to amend section 1.2 to state that the review process is to be initiated only by compliance staff and that the process may not be used to determine proposals for penalties or sanctions for violations.

**NERC – FRCC Response:**

In §1.2 of Exhibit D to the NERC – FRCC Delegation Agreement, the description of the FRCC deviation from §3.0 of the NERC CMEP has been revised as follows, as directed in P 127:

The FRCC has added a paragraph that identifies the use of our FRCC Compliance Committee in a non-decisional review process. After initial determination of an alleged violation by the FRCC Compliance Staff, and after required notification to NERC and the Registered Entity, the FRCC Compliance Staff may provide their determinations to the FRCC Compliance Committee for a technical review. This review will only be initiated by FRCC Compliance Staff. Such review shall only be called when it is deemed to help provide an increased understanding of how to comply with Reliability Standards. This is especially important for those standard requirements that may lack the clarity necessary to ensure compliance and increased reliability. In addition ~~the~~ results of this technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation. This review will not be used to determine penalties or sanctions for violations. The FRCC believes this process assures an increased understanding of standard requirements by both registered entities and compliance staff; helps build trust and transparency in the process and ultimately results in increased reliability to the bulk power system.

**December 19 Order, P 128:**

128. In addition, because FRCC does not propose a timetable for the phase-out of the compliance committee review process, we require that, in lieu of the quarterly reports that FRCC currently provides on compliance committee reviews, NERC and FRCC submit non-public reports to the Commission staff 30 days after the end of each calendar quarter on compliance committee reviews during that calendar quarter. We require that these submissions list: (i) the topic of each review initiated or continued during that quarter; (ii) the date on which the review began and ended; (iii) the reason why FRCC staff initiated the review; (iv) the persons who

participated in the review; and (v) the result of the review. We also require NERC and FRCC to file, on or before June 30, 2010, a report that incorporates the results of these quarterly reports and proposes a schedule for the termination of the reviews or a justification for their continuation. Should FRCC's compliance staff have technical questions concerning its evaluation of alleged violations, FRCC's compliance staff is encouraged to seek advice from NERC or Commission staff.<sup>63</sup>

<sup>63</sup> These quarterly reporting requirements supersede the quarterly reporting requirements imposed by the Commission in the April 19 Order. *See* April 19 Order, 119 FERC ¶ 61,060 at P 576.

**NERC – FRCC Response:**

On January 30, 2009, NERC and FRCC filed an initial report with the Commission covering the fourth quarter of 2008, as directed. NERC and FRCC will continue to file quarterly reports, as directed. NERC and FRCC will make the required filing by June 30, 2010, as specified in P 128.

**December 19 Order, P 129:**

129. Finally, with respect to FRCC's proposed modifications to the FRCC Exhibit D, at section 2.0 (addressing voting requirements applicable to the FRCC hearing body), it remains unclear whether the corollary requirement that no two stakeholder sectors may control, and no single stakeholder sector may veto, a decision by the FRCC board, or any of its committees,<sup>64</sup> applies to the compliance committee's actions as a hearing body. Accordingly, we direct FRCC to clarify whether this requirement applies to the actions of the compliance committee as a hearing body or justify why it should not. In addition, the FRCC bylaws do not appear to refer to a compliance committee of the FRCC board.<sup>65</sup> As such, the FRCC bylaws may be inconsistent with section 2.0 of the FRCC Exhibit D. We require FRCC to amend its bylaws to remove any such ambiguity and to list the quorum and voting rules applicable to the actions of the board compliance committee when it serves as the FRCC hearing body.

<sup>64</sup> *See* FRCC Delegation Agreement, at section 2(a)(i).

<sup>65</sup> The only references in the FRCC bylaws to a committee of the FRCC board appear in sections 3.11(a)-(c), which refer to a personnel and compensation committee of the board.

**NERC – FRCC Response:**

The last sentence of §2.0, Regional Hearing of Compliance Matters, of Exhibit D to the NERC – FRCC Delegation Agreement has been revised as follows: “Decisions of the BCC

[Board Compliance Committee] shall require (i) a quorum to be present requiring at least fifty (50) percent of the number of members assigned to the BCC provided, however, that in each case at least four (4) eligible Sectors are represented and (ii) a majority vote of the members of the BCC voting on the decision.” As stated in §2.0 of Exhibit D, the BCC consists of one Voting Member from each of the six FRCC sectors. As a result, if the full six-member BCC is present, an affirmative vote of at least four Voting Members would be required to adopt a decision. If five Voting Members of the BCC were present, an affirmative vote of at least three Voting Members would be required to adopt a decision. If the minimum quorum of four Voting Members were present, an affirmative vote of at least three Voting Members would be required to adopt a decision. In none of these scenarios could two stakeholder sectors control, or one stakeholder sector veto, the decision of the BCC.

In addition, a new Article IX, Section 9.1, Board Compliance Committee has been added to the FRCC Bylaws (included in Exhibit B to the NERC – FRCC Delegation Agreement). New Section 9.1 replicates §2.0 of Exhibit D of the NERC-FRCC Delegation Agreement, and constitutes a Bylaws provision creating the BCC as the hearing body and setting forth its composition, quorum and voting requirements.

#### **IV. CONCLUSION**

The North American Electric Reliability Corporation respectfully requests that the Commission (i) accept this filing, including Attachments 1 through 6 hereto, as compliance with the directives in the December 19 Order, and (ii) approve the proposed revisions to the NERC uniform CMEP and Hearing Procedures, the NERC Rules of Procedure, the individual delegation agreements between NERC and the Regional Entities, and the other Regional Entity documents, provided in Attachments 1 through 6 to this filing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Chicago, Illinois this 17th day of February, 2009.

/s/ Owen E. MacBride  
Owen E. MacBride

*Attorney for North American Electric  
Reliability Corporation*



**DOCKET NOS. RR06-1-016/017 ET AL.**

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

**ATTACHMENT 1**

**REVISED NERC *PRO FORMA*  
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM  
AND HEARING PROCEDURES**

**ATTACHMENT 1A: CLEAN VERSION**

**ATTACHMENT 1B: REDLINED VERSION**

**ATTACHMENT 1A:**  
**CLEAN VERSION**



**Revised for December 19, 2008  
FERC Order**

**North American Electric Reliability Corporation  
Compliance Monitoring and Enforcement Program  
[Month, Day] 2009**

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

# Compliance Monitoring and Enforcement Program

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PROCEDURE**

# Compliance Monitoring and Enforcement Program

## COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1** Alleged Violation: A potential violation for which the Compliance Enforcement Authority has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7** Compliance Enforcement Authority: NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.9** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by a Regional Entity or NERC and

## Compliance Monitoring and Enforcement Program

will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

- 1.1.10 Exception Reporting:** Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11 Mitigation Plan:** An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, Settlement Agreement, or otherwise.
- 1.1.12 NERC Compliance Registry:** A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13 NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan:** The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14 Periodic Data Submittals:** Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15 Regional Compliance Registry:** A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within a Regional Entity's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16 Regional Implementation Plan:** An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance

## Compliance Monitoring and Enforcement Program

with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.

- 1.1.17** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.18** Remedial Action Directive: An action (other than a penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.19** Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.20** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the Compliance Enforcement Authority and that are included for monitoring in the Regional Implementation Plan.
- 1.1.21** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.
- 1.1.22** Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

## **Compliance Monitoring and Enforcement Program**

### **2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS**

The Compliance Enforcement Authority shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. The Compliance Enforcement Authority shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within the Compliance Enforcement Authority's area of responsibility. Each Registered Entity shall inform the Compliance Enforcement Authority promptly of changes to its registration information. The Compliance Enforcement Authority shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The Compliance Enforcement Authority shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The Compliance Enforcement Authority will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The Compliance Enforcement Authority will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

Each Regional Entity shall develop, maintain, and provide to NERC a Regional Compliance Registry with updates as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard.



## Compliance Monitoring and Enforcement Program

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The Compliance Enforcement Authority will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by the Compliance Enforcement Authority through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

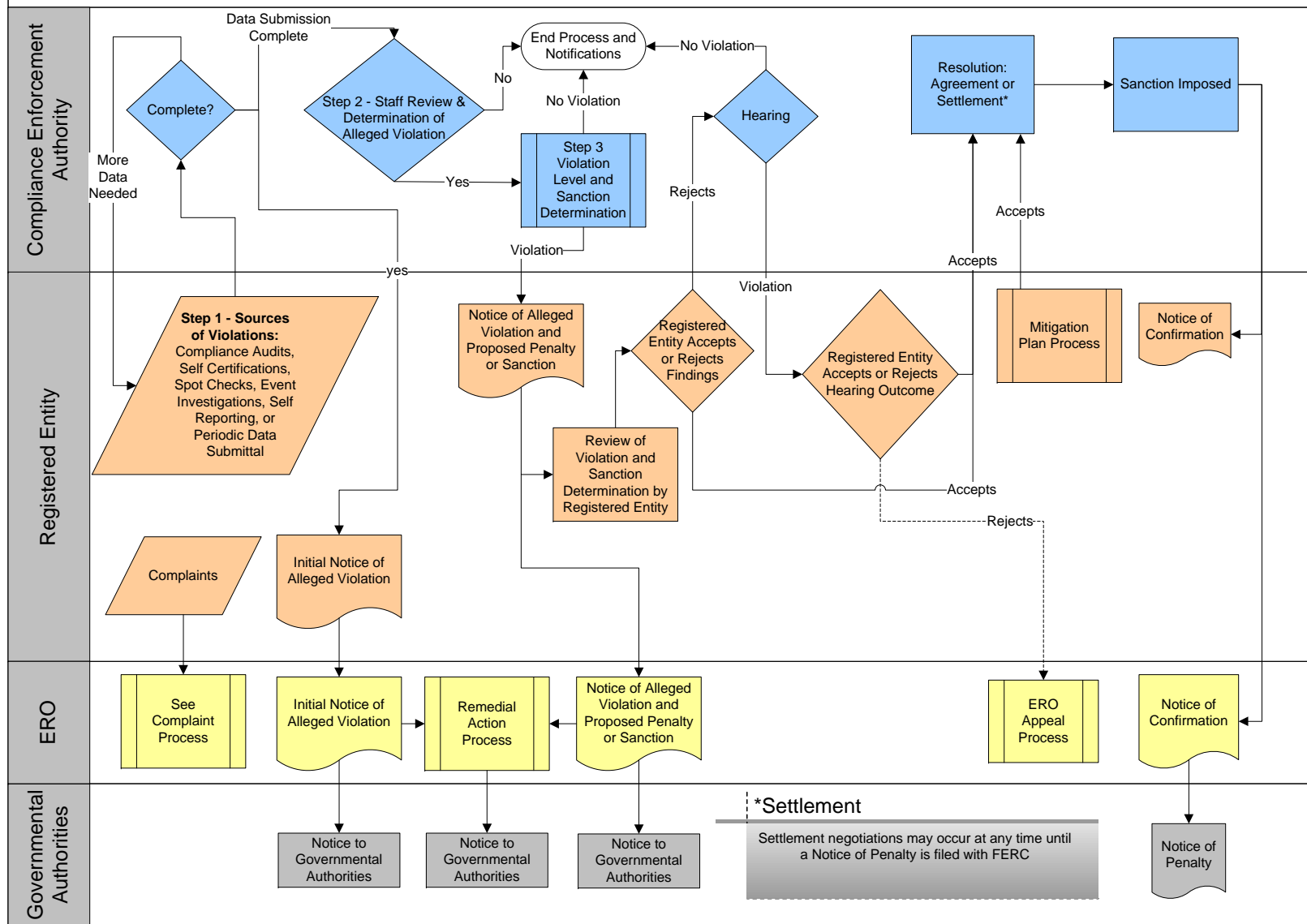
Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.

# Compliance Monitoring and Enforcement Program

## NERC Compliance Monitoring and Enforcement Program Overview



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:<sup>1</sup>

- The Compliance Enforcement Authority distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, the Compliance Enforcement Authority informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the Regional Entity provides the audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the Compliance Audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the Compliance Audit. The audit team follows NERC audit guidelines in the implementation of the Compliance Audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an

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<sup>1</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

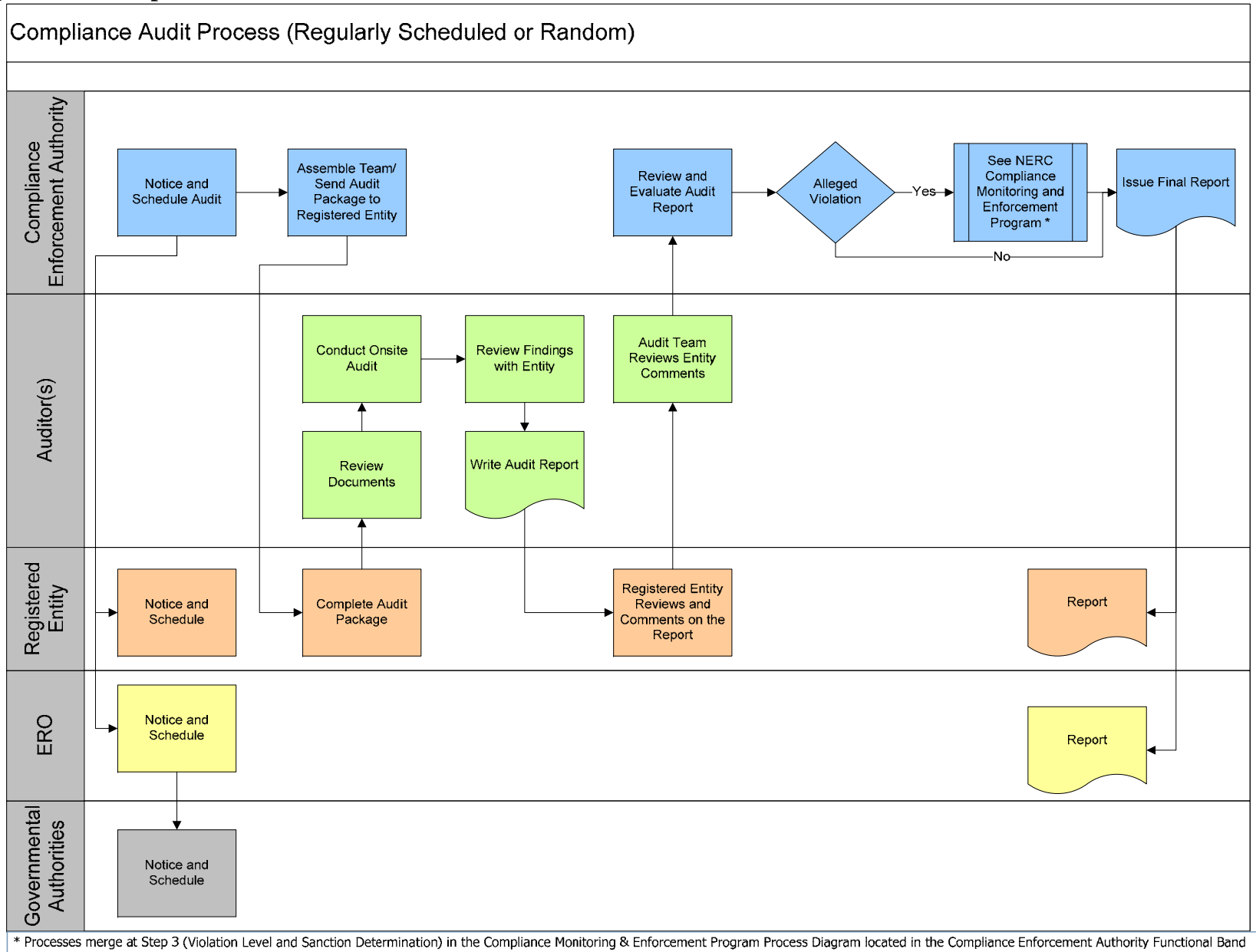
## Compliance Monitoring and Enforcement Program

audit report, including an assessment of compliance with the Reliability Standards, to the Compliance Enforcement Authority.

- The Compliance Enforcement Authority reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

**Figure 3.1 – Compliance Audit Process**



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule**

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

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

### **3.1.3 Frequency of Compliance Audits**

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the Compliance Enforcement Authority if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the Compliance Enforcement Authority or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated, the Compliance Enforcement Authority shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### **3.1.4 Scope of Compliance Audits**

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### **3.1.5 Conduct of Compliance Audits**

The audit team shall be comprised of staff personnel from the Compliance Enforcement Authority and may include contractors and industry volunteers as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient audit team. The audit team

## **Compliance Monitoring and Enforcement Program**

leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any Regional Entity Compliance Audit team either as an observer or as an audit team member as determined by the Regional Entity. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit. The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

### **3.1.6 Compliance Audit Reports**

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains

## **Compliance Monitoring and Enforcement Program**

recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. Regional Entities will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or the Compliance Enforcement Authority until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the Compliance Enforcement Authority pursuant to the provisions of Section 5.0.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### **3.2 Self-Certification**

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.



## Compliance Monitoring and Enforcement Program

### 3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**:<sup>2</sup>

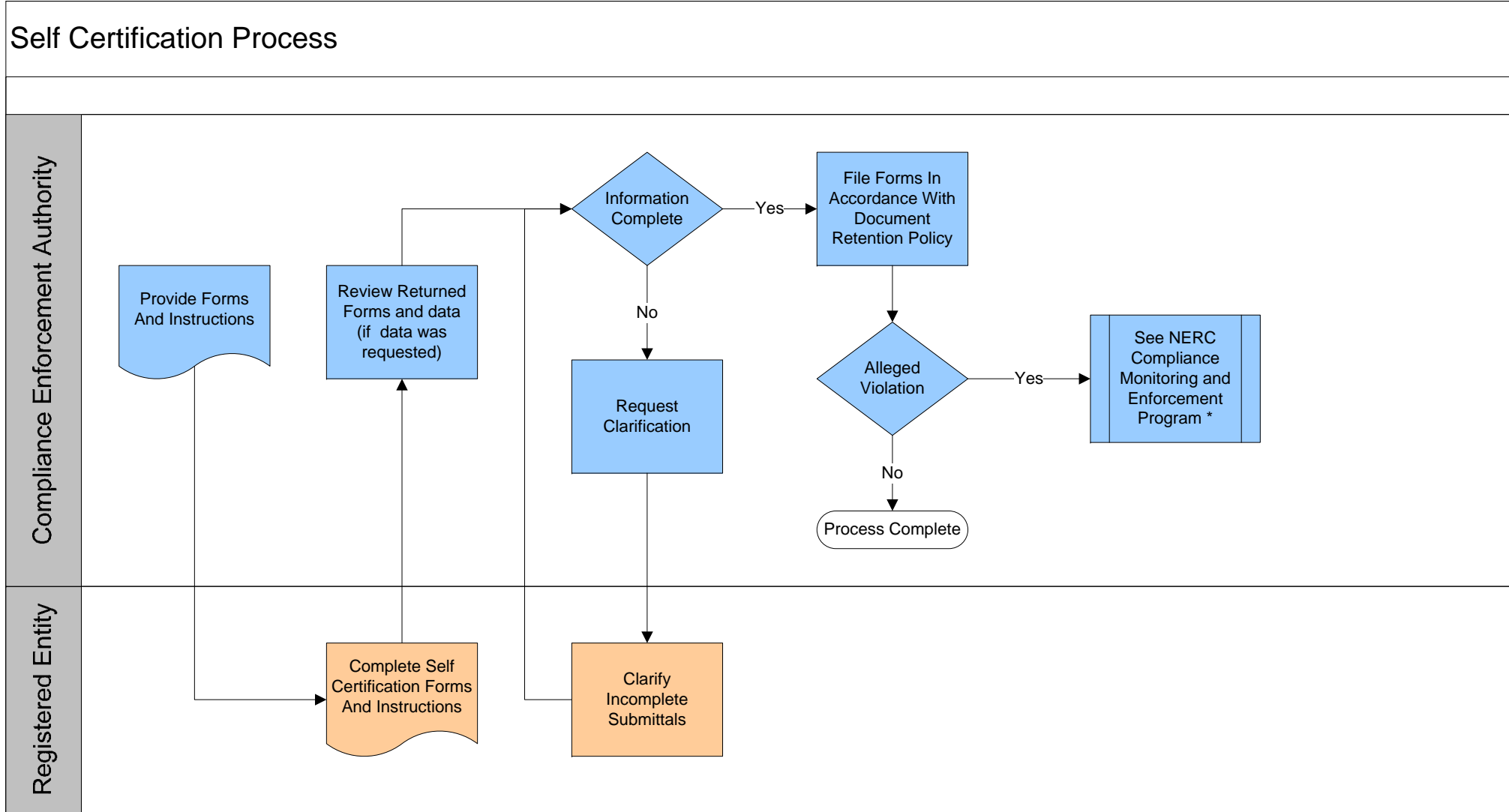
- The Compliance Enforcement Authority posts and updates the reporting schedule and informs Registered Entities. The Compliance Enforcement Authority ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>2</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.  
[Month, Day] 2009

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Function

## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by the Compliance Enforcement Authority. Spot Checking may be initiated by the Compliance Enforcement Authority at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The Compliance Enforcement Authority then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by the Compliance Enforcement Authority as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>3</sup>

- The Compliance Enforcement Authority notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the information to be submitted or available for review.
- The Compliance Enforcement Authority, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by the Compliance Enforcement Authority is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking Team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the Compliance Enforcement Authority in the format specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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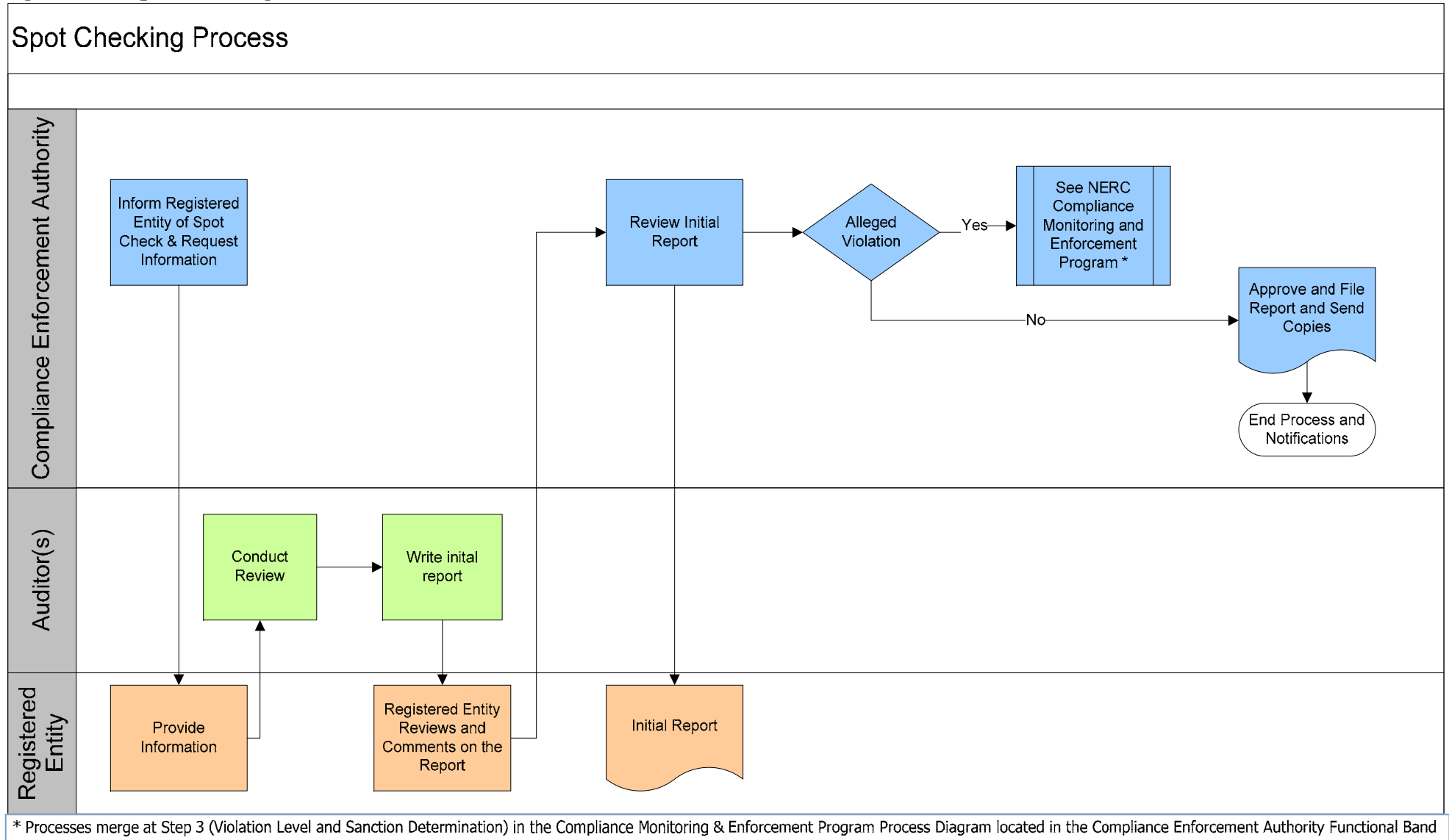
<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.

## Compliance Monitoring and Enforcement Program

- The Compliance Enforcement Authority completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by the Compliance Enforcement Authority or NERC in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>4</sup> The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation of a U.S.-related matter, NERC shall provide notice to FERC of the investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an investigation of a non-U.S.-related matter, NERC shall provide notice of the investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

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<sup>4</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Violation Investigations into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:<sup>5</sup>

- The Compliance Enforcement Authority is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for its Compliance Violation Investigation, the Compliance Violation Investigation, as it unfolds, need not be limited to this scope.
- NERC assigns a NERC staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the Compliance Violation Investigation team and their recent employment history. The Registered Entity may object to any individual on the Compliance Violation Investigation team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the Compliance Violation Investigation team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to a Compliance Violation Investigation may

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<sup>5</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

object to any member of the Compliance Violation Investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the Compliance Violation Investigation of the Registered Entity.

- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Violation Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Violation Investigation pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to

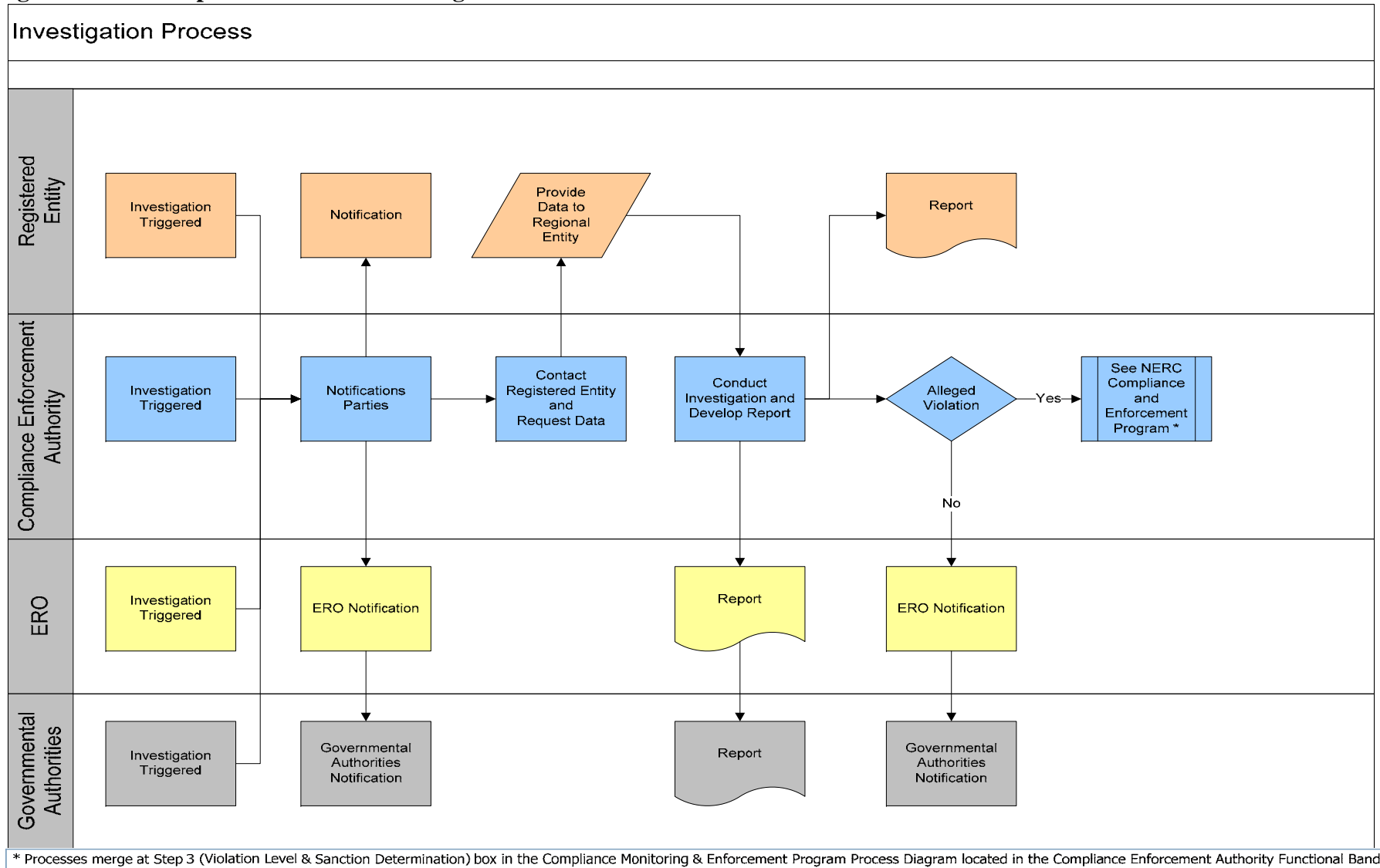


## **Compliance Monitoring and Enforcement Program**

any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>6</sup>

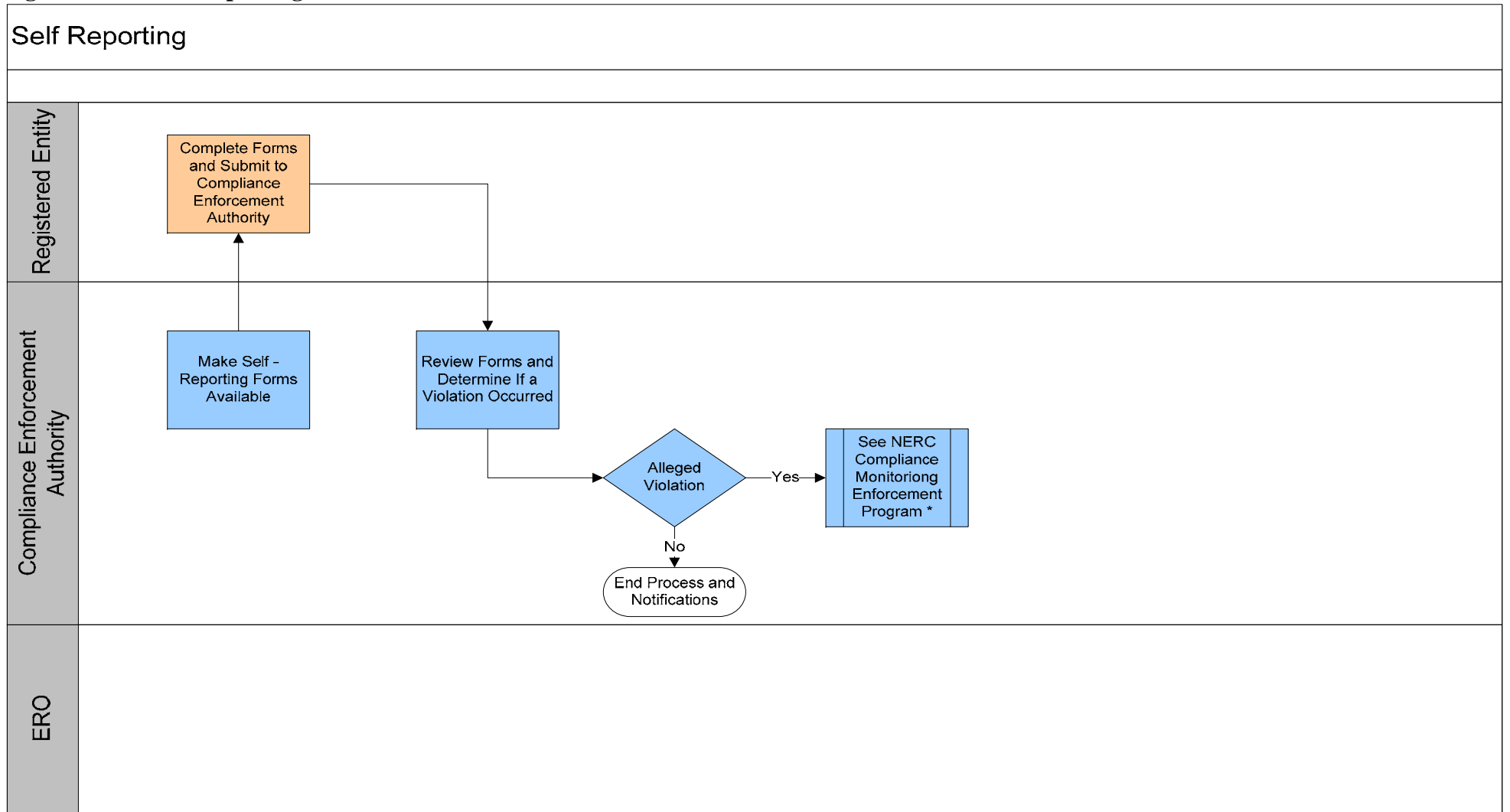
- The Compliance Enforcement Authority posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>6</sup>This process normally completes within sixty (60) days following the Compliance Enforcement Authority's receipt of data.  
[Month, Day], 2009

# Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the Compliance Enforcement Authority, or on an as-needed basis. Requests for data submittals will be issued by the Compliance Enforcement Authority to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>7</sup>

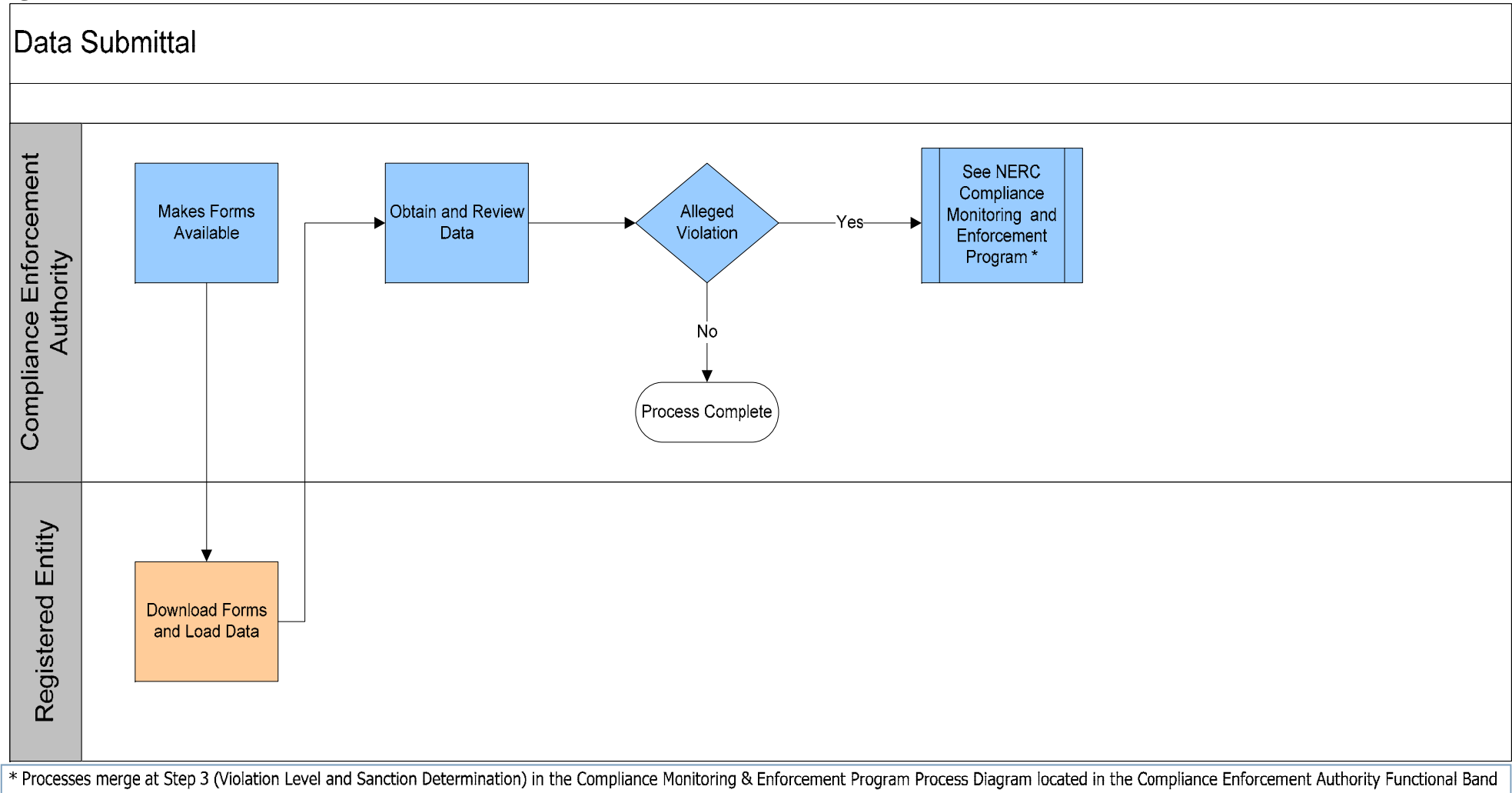
- The Compliance Enforcement Authority posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The Compliance Enforcement Authority ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its web site.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.  
[Month, Day], 2009

# Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The Compliance Enforcement Authority shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The Compliance Enforcement Authority shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. A Regional Entity will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures, (2) where the Regional Entity determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The Regional Entity will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>8</sup>

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and Regional Entity Web sites.

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<sup>8</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

## **Compliance Monitoring and Enforcement Program**

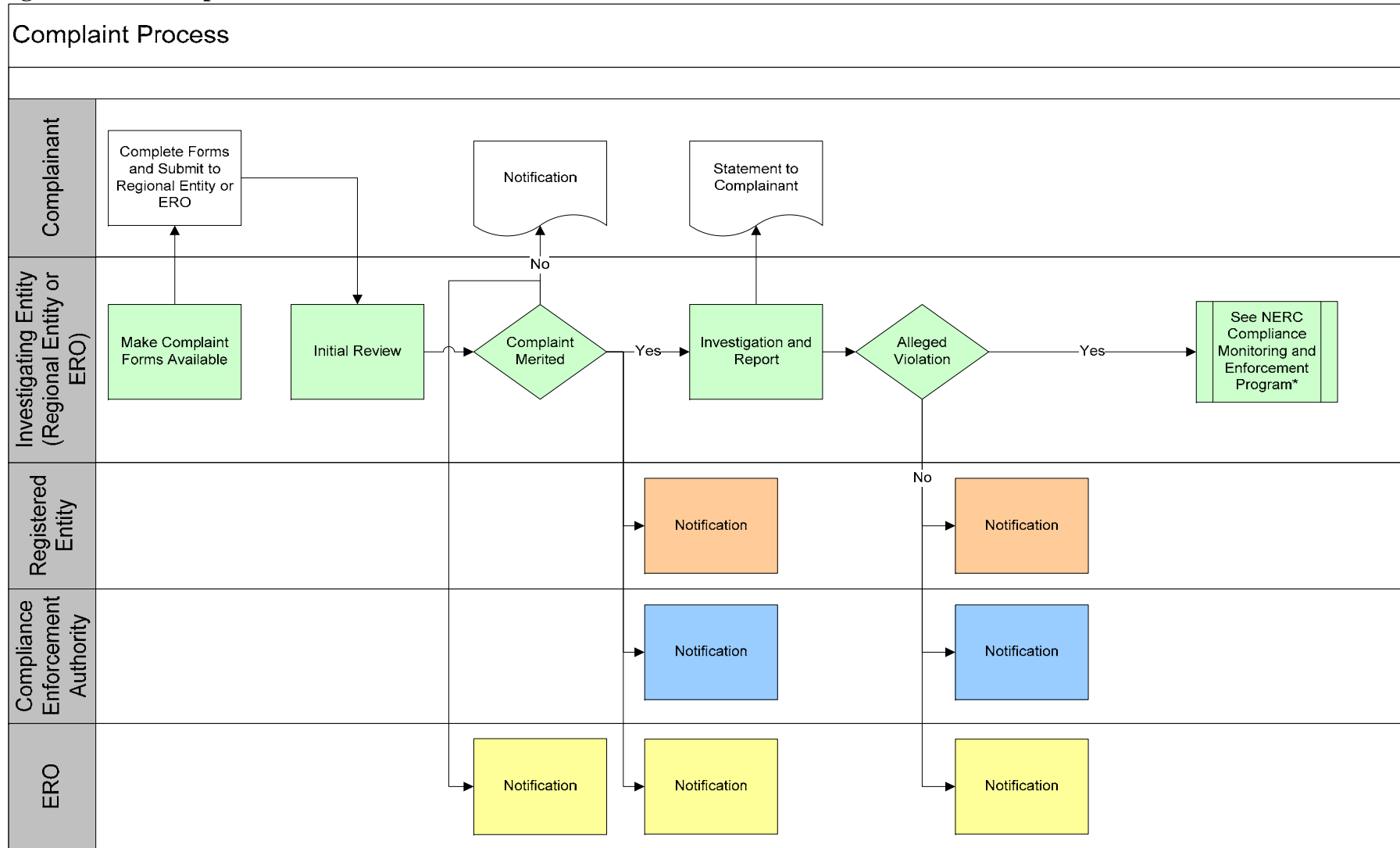
The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment of whether the initiation of a Compliance Violation Investigation is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.



# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## **Compliance Monitoring and Enforcement Program**

### **3.8.2 Anonymous Complainant Notification Procedure**

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>9</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting possible violations to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## **4.0 ANNUAL IMPLEMENTATION PLANS**

### **4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan**

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### **4.2 Regional Entity Implementation Plan**

By November 1 of each year, Regional Entities will submit a Regional Implementation Plan for the following calendar year to NERC for approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's Web site.

## **5.0 ENFORCEMENT ACTIONS**

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and each Regional

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<sup>9</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## **Compliance Monitoring and Enforcement Program**

Entity shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the Regional Entity.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### **5.1 Notification to Registered Entity of Alleged Violation**

If the Compliance Enforcement Authority alleges that a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The Compliance Enforcement Authority may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that

## Compliance Monitoring and Enforcement Program

submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;

- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedures**, and
- (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from the Compliance Enforcement Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the notice of the penalty or sanction or other enforcement action will then be processed and issued to the Registered Entity.

### 5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and sanction (if applicable), in which case the Compliance Enforcement Authority shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the Compliance Enforcement Authority a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will become a Confirmed Violation when filed by NERC with FERC or other Applicable Governmental Authority.

## **Compliance Monitoring and Enforcement Program**

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying the Compliance Enforcement Authority's designated hearing representative.<sup>10</sup>

### **5.3 Hearing Process for Compliance Hearings**

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

### **5.4 Settlement Process**

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC or another Applicable Governmental Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The 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 the Regional Entity and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the Regional Entity will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled

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<sup>10</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the Compliance Enforcement Authority, the Registered Entity may file a request for hearing with the Compliance Enforcement Authority.

## Compliance Monitoring and Enforcement Program

(regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement. The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:<sup>11</sup>

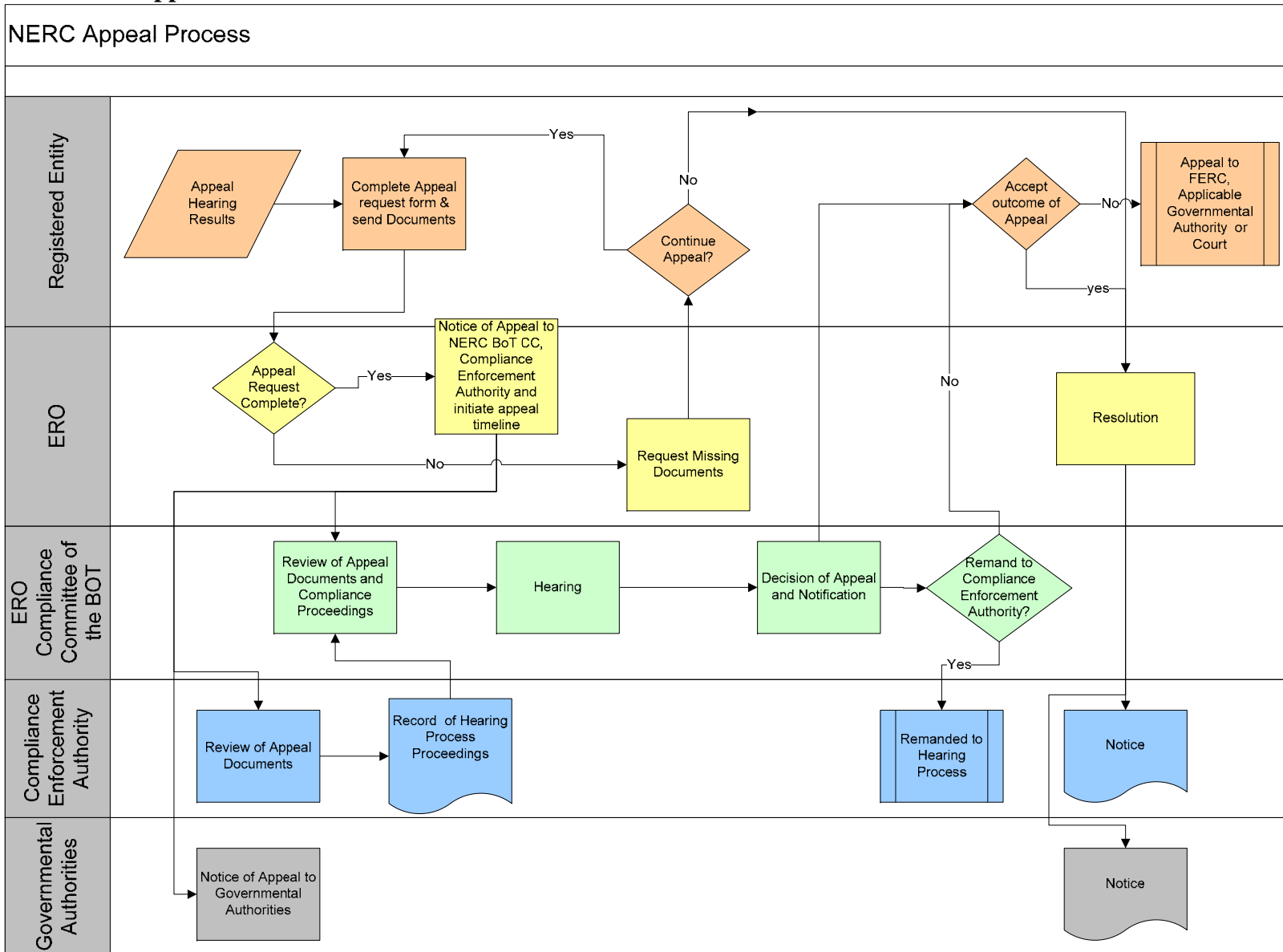
On appeal, NERC shall either affirm the Regional Entity decision or remand to the Regional Entity with reasons for its remand, which may include a direction to the Regional Entity to revise the decision. If NERC directs the Regional Entity to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of the Regional Entity whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

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<sup>11</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty**

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the Regional Entity to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the Regional Entity, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

## **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### **6.1 Requirement for Submission of Mitigation Plans**

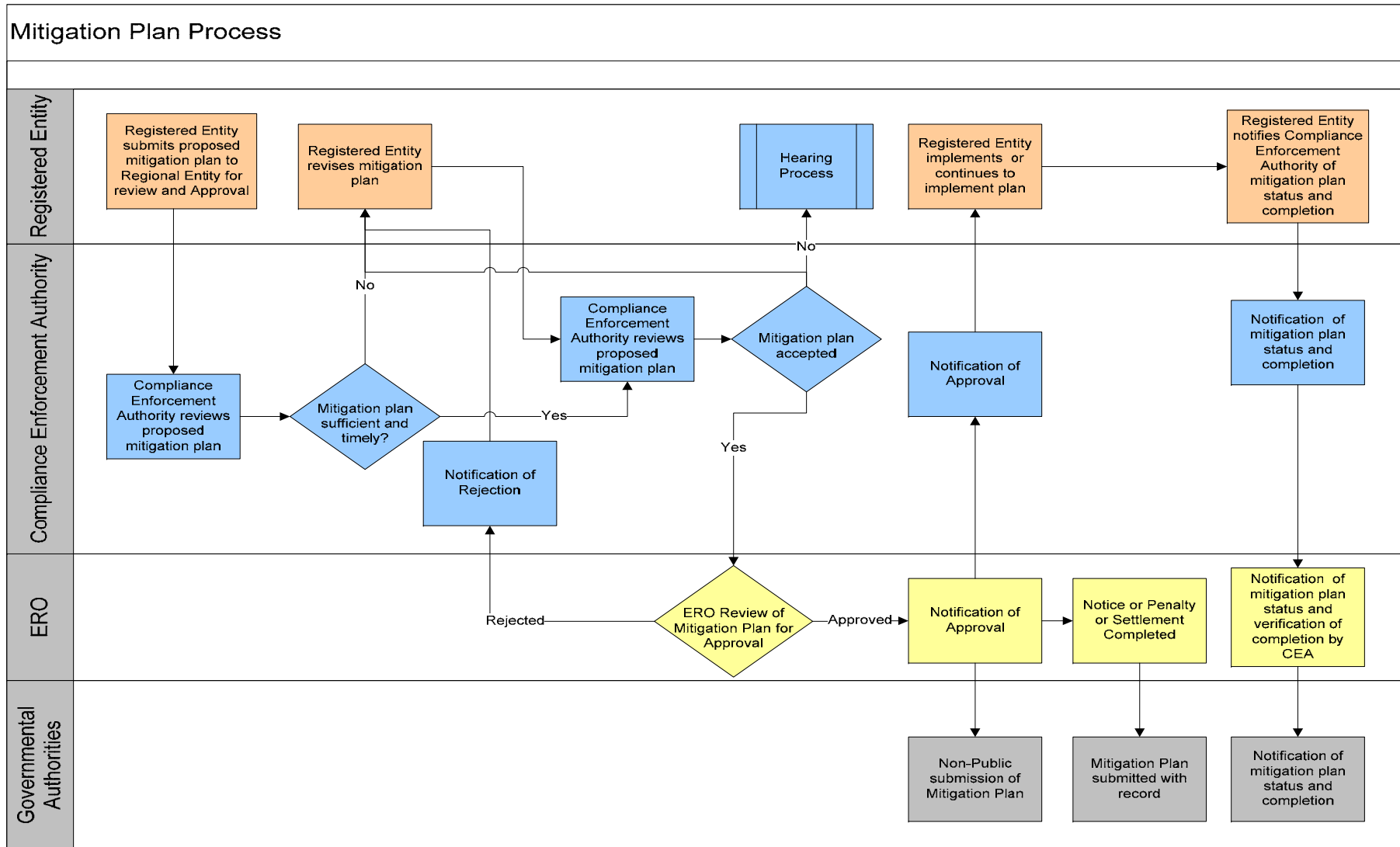
A Registered Entity found to be in violation of a Reliability Standard shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.



# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process



## **Compliance Monitoring and Enforcement Program**

### **6.2 Contents of Mitigation Plans**

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### **6.3 Timetable for Completion of Mitigation Plans**

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The Compliance Enforcement Authority will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including: (i) short

## **Compliance Monitoring and Enforcement Program**

assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the Regional Entity acting as Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### **6.4 Submission of Mitigation Plans**

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Regional Entity acting as Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the hearing

## **Compliance Monitoring and Enforcement Program**

body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

### **6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans**

Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Regional Entities will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, will notify the Regional Entity and the Registered Entity as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the

## **Compliance Monitoring and Enforcement Program**

Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part of the public posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard in accordance with Section 5.4.

### **6.6 Completion/Confirmation of Implementation of Mitigation Plans**

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Regional Entities will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### **6.7 Recordkeeping**

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

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.

## **Compliance Monitoring and Enforcement Program**

- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

### **7.0 REMEDIAL ACTION DIRECTIVES**

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Regional Entity shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. The Compliance Enforcement Authority will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The Regional Entity will notify NERC within two (2) business days after issuing a Remedial Action Directive.

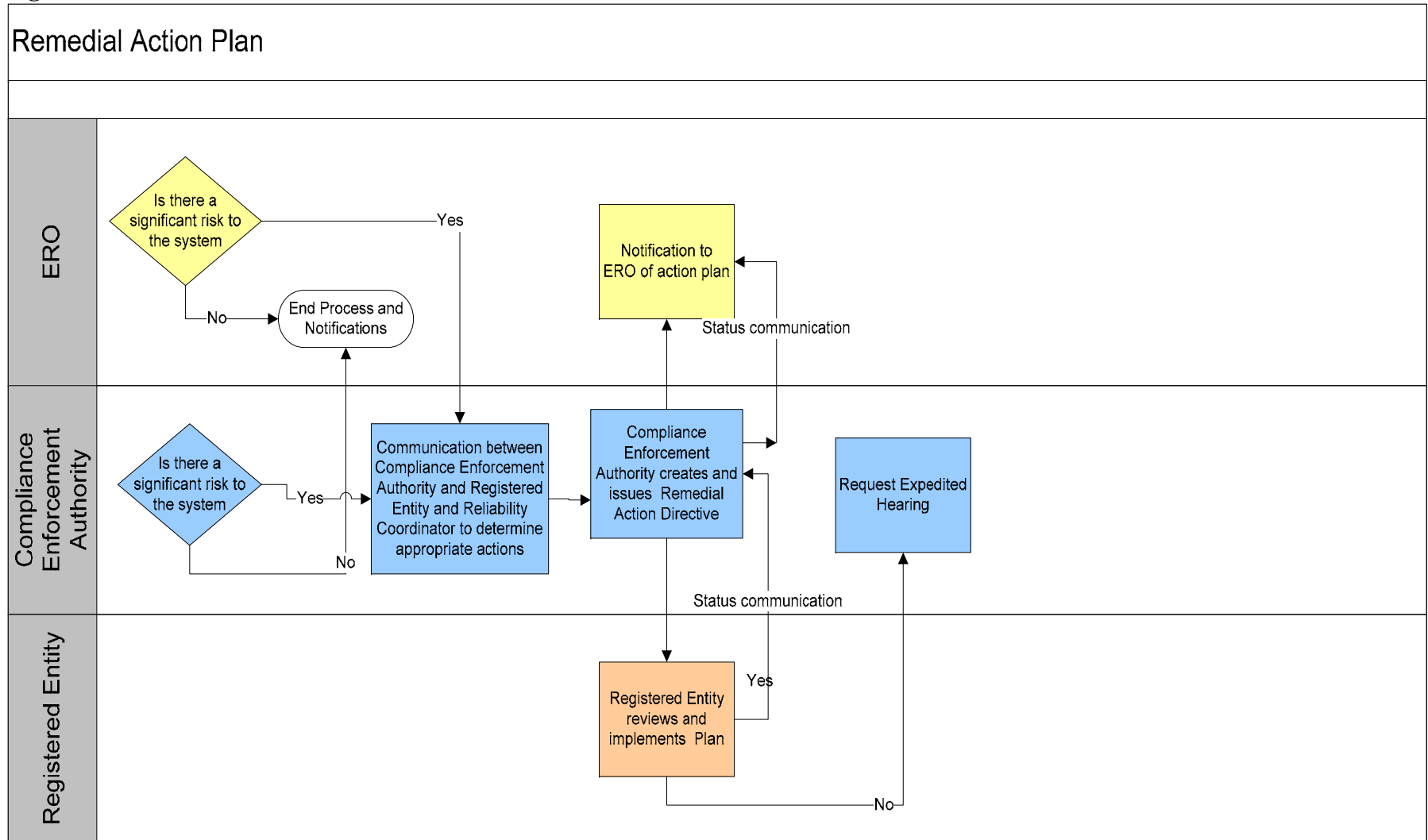
## **Compliance Monitoring and Enforcement Program**

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.

# Compliance Monitoring and Enforcement Program

**Figure 7.0 – Remedial Action Process**





## **Compliance Monitoring and Enforcement Program**

### **8.0 REPORTING AND DISCLOSURE**

Regional Entities shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19), containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

Regional Entities shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the Regional Entity through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the Regional Entity shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority, within two (2) business days of receiving such a report from the Regional Entity; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

Regional Entities shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.

Regional Entities shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, Regional Entities will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

## **Compliance Monitoring and Enforcement Program**

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the Regional Entity to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its Web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

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

## **Compliance Monitoring and Enforcement Program**

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

The Compliance Enforcement Authority will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

#### PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard for which the Compliance Enforcement Authority has requested data, information, or other reports. The Compliance Enforcement Authority however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

Step 1: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's designated contact.

Step 2: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).

Step 3: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's chief executive officer or equivalent (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).

A full Compliance Audit may be scheduled at this step.

Step 4: Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.

Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.

# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

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# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into (i) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a [HEARING BODY] established by the Compliance Enforcement Authority. The composition of the [HEARING BODY], after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the [HEARING BODY] on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.

#### 1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the [HEARING BODY], for good cause shown, either upon the Hearing Officer’s or the [HEARING BODY]’s own motion or upon the motion of any Participant.

#### 1.1.3 Standards for Discretion

The Compliance Enforcement Authority’s discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in Compliance Enforcement Authority proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant’s failure to act diligently and in good faith.
- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.

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- d) **Balanced Decision-Making** - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the Compliance Enforcement Authority's conflict of interest policy.
- e) **Impartiality** - Persons appearing before the [HEARING BODY] should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) **Expedition** - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### **1.1.4 Interpretation**

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

### **1.1.5 Definitions**

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

“Bulk-Power System,” for the purposes of these Hearing Procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk,” as designated by the Compliance Enforcement Authority.

“Compliance Enforcement Authority’s area of responsibility” means the Compliance Enforcement Authority’s corporate region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s area of responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.



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“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

“Director of Compliance” means the Director of Compliance of the Compliance Enforcement Authority, who is responsible for the management and supervision of Compliance Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to these Hearing Procedures.

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *ERO Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s violation and take into consideration any timely efforts made by the Registered Entity to remedy the violation.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

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“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies the Compliance Enforcement Authority’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the [HEARING BODY].

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

#### **1.2.1 Contents of Filings**

All filings made with [HEARING BODY] must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other documents; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

#### **1.2.2 Form of Filings**

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.

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- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

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

Filings shall be made with the Clerk of the Compliance Enforcement Authority located at its principal office. The office will be open from [*Compliance Enforcement Authority business hours*] local time each day except Saturday, Sunday, legal holidays and any other day declared by the Compliance Enforcement Authority.

#### **b) When to File**

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the [HEARING BODY]. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than [*Compliance Enforcement Authority close of business*] local time on the date specified.

#### **c) How to File**

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system by the Compliance Enforcement Authority.

#### **d) Number of Copies to File**

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the [HEARING BODY] with a copy of each filing.

#### **e) Signature**

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

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### **f) Verification**

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the [HEARING BODY]. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.

### **g) Certificate of Service**

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

## **1.2.4 Service**

### **a) Service List**

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Director of Compliance and the Registered Entity's designated agent for service [as registered with the Compliance Enforcement Authority] shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

### **b) By Participants**

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

### **c) By the Clerk**

The Clerk shall serve all issuances of the Hearing Officer and [HEARING BODY] upon the members of the [HEARING BODY] and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Clerk shall transmit a copy of the record of a proceeding to the ERO at the time it serves the ERO with either (1) a notice of penalty, or (2) a [HEARING BODY] final order that includes a notice of penalty.

## **Compliance Monitoring and Enforcement Program**

### **d) Effective Date of Service**

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service of a document upon the Participant, four (4) days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

#### **1.2.5 Computation of Time**

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the office of the Compliance Enforcement Authority is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the office of the Compliance Enforcement Authority is closed.

#### **1.2.6 Extensions of Time**

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or [HEARING BODY] for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or [HEARING BODY] may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

#### **1.2.7 Amendments**

Amendments to any documents filed in a proceeding may be allowed by the Hearing Officer or the [HEARING BODY] upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

#### **1.2.8 Transcripts**

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

The Compliance Enforcement Authority will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay

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for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

### **1.2.9 Rulings, Notices, Orders and Other Issuances**

Any action taken by the Hearing Officer or the [HEARING BODY] shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the [HEARING BODY]. All notices of hearings shall set forth the date, time and place of hearing.

### **1.2.10 Location of Hearings and Conferences**

All hearings and oral arguments shall be held at the principal office of the Compliance Enforcement Authority unless the Hearing Officer or [HEARING BODY] designates a different location.

### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the [HEARING BODY], except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

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

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

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

No hearing, oral argument or meeting of the [HEARING BODY] shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or [HEARING BODY], or any transcript, made in any proceeding shall be publicly released unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the [HEARING BODY], the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authorities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed

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by the letters “[RE]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, [HEARING BODY] members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

## **1.3 Initiation of the Hearing Process**

### **1.3.1 Registered Entity’s Option to Request a Hearing**

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these Hearing Procedures, a Registered Entity may file a statement with the Compliance Enforcement Authority requesting a hearing if either:

- a) The Registered Entity files a response to a notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or
- b) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan.

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity’s proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent)

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requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- a) The Registered Entity's Self-Reporting of a violation;
- b) The notice of Alleged Violation and the Registered Entity's response thereto; and/or
- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

### **1.3.2 Shortened Hearing Procedure**

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

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

- a) The Prehearing Conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days after the prehearing conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;



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- 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:
- 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Paragraph 1.7.5 and within seven (7) days thereafter, a reply brief designated "Brief in Reply to Exceptions."
- h) The [HEARING BODY] shall strive, but is not required, to issue a final order within ninety (90) days of the notice of hearing.

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

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### **1.4 General Hearing Procedure**

#### **1.4.1 Notice of Hearing**

Within seven (7) days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) days after the notice of hearing is issued.

#### **1.4.2 Hearing Officer**

The Compliance Enforcement Authority may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the [HEARING BODY] as set forth in Paragraph 1.4.3. Members of the [HEARING BODY] may attend any aspect of the hearing.

The [HEARING BODY] may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for submission of the matter to the [HEARING BODY] for final decision through the presentation to the [HEARING BODY] of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- 3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise and issue orders concerning discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;
- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;

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- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue protective orders pursuant to Paragraph 1.5.10;
- 11) To issue initial opinions; and
- 12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 [HEARING BODY]**

The [HEARING BODY] is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

- 1) The [HEARING BODY] shall receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written comments, testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.
- 2) The [HEARING BODY] or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The [HEARING BODY] shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the [HEARING BODY] shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- 4) To the extent that the [HEARING BODY] disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Paragraph 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.

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- 5) The [HEARING BODY] shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the [HEARING BODY] shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

### **1.4.4 Interlocutory Review**

A Participant shall be allowed to seek interlocutory review by the [HEARING BODY] of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the [HEARING BODY], the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the [HEARING BODY] within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the [HEARING BODY].

On review of a Hearing Officer's ruling, the [HEARING BODY] may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The [HEARING BODY] may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the [HEARING BODY], and (ii) majority vote of the members of the [HEARING BODY] voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the [HEARING BODY'S] action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the [HEARING BODY] based on a finding of exceptional circumstances.

A non-Participant that has been ordered by the Hearing Officer pursuant to paragraph 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the [HEARING BODY] of the Hearing Officer's

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order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to paragraph 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide document, information or testimony.

### **1.4.5 Disqualification**

A Hearing Officer, Technical Advisor or member of the [HEARING BODY] shall recuse himself or herself from a proceeding if participation would violate the Compliance Enforcement Authority's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the [HEARING BODY] from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

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

### **1.4.6 Technical Advisor**

The Hearing Officer and/or the [HEARING BODY] may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

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

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

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the [HEARING BODY], the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
  - 2) the [HEARING BODY], the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;
    - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the [HEARING BODY], the Hearing Officer and any Technical Advisor.
- d) Any member of the [HEARING BODY], the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

### **1.4.8 Appearances**

Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual

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authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

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

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

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

### **1.4.10 Consolidation of Proceedings**

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

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

## **1.5 Prehearing Procedure**

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

### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

- 1) Preliminarily identify the issues;

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

### **1.5.3 Summary Disposition**

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

### **1.5.4 Status Hearings**

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

### **1.5.5 Motions**

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise



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ordered by a Hearing Officer, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

### **1.5.6 Experts**

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

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

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

(1) Within five (5) days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:

(A) requests for information to the Respondent;

(B) every written request, including e-mail, directed to persons not employed by the Compliance Enforcement Authority to provide information or documents or to be interviewed;

(C) the documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;

(E) all other documents obtained from the Respondent; and

(F) all other documents obtained from persons not employed by the Compliance Enforcement Authority.

The sole bases pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7(b); provided, however, that the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or [HEARING BODY] shall oversee the Staff's

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designation of documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary.

(3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent not later than fourteen (14) days after Staff receives such documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional documents available to the Respondent not less than ten (10) days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

(4) Nothing in subparagraph (a)(1) shall limit the discretion of the Compliance Enforcement Authority to make any other document available to the Respondent or the authority of the Hearing Officer to order the production of any other documents or information by any Participant.

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

(1) Staff may withhold a document from inspection and copying by the Respondent if:

(A) the document is privileged to Staff or constitutes attorney work product of Staff's counsel (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);

(B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

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

(2) Nothing in Subparagraph (b)(1)(B), (C) or (D) authorizes Staff to withhold a document, or a part thereof, that contains exculpatory evidence. Nothing in Subparagraph (b)(1) requires Staff to withhold a document from disclosure.

### **(c) Withheld Document List**

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). Upon review, the Hearing Officer may order Staff to make any document withheld available to the Respondent(s) for inspection and copying.

### **(d) Timing of Inspection and Copying**

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

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

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

### **(f) Copying Costs**

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

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

In the event that a document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a document, the burden shall be on Staff to show that such

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failure was harmless error. The Hearing Officer, or, upon review, the [HEARING BODY] shall determine whether the failure to make the document available was harmless error.

### 1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing. Unless otherwise directed by the Hearing Officer or [HEARING BODY] upon motion by a Participant or by the Hearing Officer, or by the [HEARING BODY] on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (a) The provisions of Subparagraphs (d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the [HEARING BODY] have the authority to issue orders to compel the appearance by or production of documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the [HEARING BODY] do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony.
- (d) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony.
- (e) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the [HEARING BODY], (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or [HEARING BODY].

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- (f) Unless otherwise ordered by the Hearing Officer or [HEARING BODY], a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, request for admissions, or order to produce or provide documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- (g) A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying.
- (h) In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the [HEARING BODY] shall determine whether the failure to make the document available was harmless error.
- (i) Unless otherwise ordered by the Hearing Officer or [HEARING BODY], all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- (j) Notwithstanding (f) and (i), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### **1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence**

Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Paragraph 1.6.16 and (ii) the testimony and documents of a non-

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Participant provided pursuant to an order to produce or provide documents, information or testimony, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce documents), the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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

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

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

### **1.5.10 Protective Orders**

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of

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non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.

- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).
- c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
- e) The protective order shall identify the data, documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

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

The Hearing Officer or the [HEARING BODY] may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memoranda prior to the evidentiary hearing that outline each Participant's position on the issue(s) in dispute, the key

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facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. The purpose of such memoranda will be to aid the Hearing Officer and [HEARING BODY] in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum. The Hearing Officer may establish page limitations on such submissions.

### **1.6 Evidentiary Hearing Procedure**

#### **1.6.1 Evidentiary Hearings**

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

#### **1.6.2 Order of Receiving Evidence**

In all proceedings Compliance Staff shall open and close.

#### **1.6.3 Opening and Closing Statements**

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the [HEARING BODY]. Any Participant's request for such statements, or a Hearing Officer or [HEARING BODY] notice requiring such statements, shall be made at least ten (10) days in advance of the start of the evidentiary hearing.

#### **1.6.4 Right of Participant to Present Evidence**

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

#### **1.6.5 Exhibits**

All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

#### **1.6.6 Witness Attendance at Evidentiary Hearing**

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the [HEARING BODY] have any questions for the witness, in which event the witness does need not be present



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at the evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the [HEARING BODY], in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the Compliance Enforcement Authority's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

### **1.6.8 Evidence that is Part of a Book, Paper or Document**

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not

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offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.6.9 Stipulations**

The Participants may stipulate to any relevant fact or the authenticity of any relevant document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### **1.6.10 Official Notice**

Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the Compliance Enforcement Authority.
- 3) State, provincial and federal statutes and municipal and local ordinances.
- 4) The decisions of state, provincial and federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of the Compliance Enforcement Authority.
- 6) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.6.11 Admissibility of Evidence**

Any evidence offered, including that included in a book, paper or document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

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The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### **1.6.12 Offer of Proof**

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

### **1.6.13 Reservation of Evidentiary Ruling**

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

### **1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the [HEARING BODY] may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the [HEARING BODY] seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the [HEARING BODY]. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the [HEARING BODY]. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

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### **1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the evidentiary hearing. Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

### **1.6.17 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### **1.7.2 Other Pleadings**

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

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### **1.7.3 Draft Initial Opinions**

The Hearing Officer may permit or require Participants to file draft initial opinions that set forth the Participants' proposed findings of fact and conclusions.

### **1.7.4 Hearing Officer's Initial Opinion**

Except as otherwise ordered by the [HEARING BODY], at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the [HEARING BODY]'s review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the [HEARING BODY] require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 1.5.10.

### **1.7.5 Exceptions**

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.

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- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### **1.7.6 Oral Argument**

The [HEARING BODY] may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified by the [HEARING BODY]. The [HEARING BODY] will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than 48 hours prior to the time and date of oral argument.

### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the [HEARING BODY]'s own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### **1.7.8 [HEARING BODY] Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the [HEARING BODY] shall issue its final order. Issuance of a final order shall require (i) a quorum of the [HEARING BODY], which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the [HEARING BODY], and (ii) majority vote of the members of the [HEARING BODY] voting on the final order (which number of members voting shall not be less than a quorum). The [HEARING BODY] shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of

## **Compliance Monitoring and Enforcement Program**

each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The [HEARING BODY] will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled “Final Order and Notice of Penalty”. The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The [HEARING BODY] shall direct the Clerk to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### **1.7.9 The Record**

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:

- 1) Notice of Alleged Violation and Registered Entity’s response thereto;
- 2) Registered Entity’s proposed Mitigation Plan and Staff’s statement identifying its disagreement(s) therewith;
- 3) Remedial Action Directives and the Registered Entity’s notice contesting the Remedial Action Directive;
- 4) Registered Entity’s request for a hearing;
- 5) Participant filings, motions, and responses;
- 6) Notices, rulings, orders and other issuances of the Hearing Officer and [HEARING BODY];
- 7) Transcripts;
- 8) Evidence received;
- 9) Written comments submitted in lieu of written testimony;
- 10) Matters officially noticed;
- 11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 12) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 13) Post-hearing pleadings other than briefs;
- 14) The Hearing Officer’s initial opinion;

## **Compliance Monitoring and Enforcement Program**

- 15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 16) The [HEARING BODY]'s final order, any notice of Penalty issued therewith, and the Clerk's notice transmitting the final order to the Participants;
- 17) All notices of ex parte communications; and
- 18) Any notifications of recusal and motions for disqualification of a member of the [HEARING BODY] or Hearing Officer of Technical Advisor and any responses or replies thereto.

### **1.7.10 Appeal**

A Final Order of the [HEARING BODY] may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit to NERC the record of any docket that is the subject of an appealed final order.

## **1.8 Settlement**

Settlements may be entered into at any time pursuant to Section 5.4 of the NERC Compliance Monitoring and Enforcement Program and the Compliance Enforcement Authority's settlement procedures.

## **1.9 Remedial Action Directives**

### **1.9.1 Initiation of Remedial Action Directive Hearing**

Staff] may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. The Compliance Enforcement Authority will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.



## Compliance Monitoring and Enforcement Program

### 1.9.2 Remedial Action Directive Hearing Procedure

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the [HEARING BODY] will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the [HEARING BODY]. Oral argument shall not be held.
- f) The [HEARING BODY] shall issue a summary written decision within ten (10) days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.

Within thirty (30) days following issuance of its summary written decision, the [HEARING BODY] shall issue a full written decision. The written decision shall state the conclusions of the [HEARING BODY] with respect to the Remedial Action Directive, and shall explain the reasons for the [HEARING BODY]'s conclusions.

**ATTACHMENT 1B:**  
**REDLINED VERSION**

Revised for December 19, 2008  
FERC Order

**North American Electric Reliability Corporation  
Compliance Monitoring and Enforcement Program**

[Month, Day] ~~2008~~2009

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

# Compliance Monitoring and Enforcement Program

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

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

## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1** Alleged Violation: A potential violation for which the Compliance Enforcement Authority has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7** Compliance Enforcement Authority: NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.9** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by a Regional Entity or NERC and

## Compliance Monitoring and Enforcement Program

will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

- 1.1.10 Exception Reporting:** Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11 Mitigation Plan:** An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, Settlement Agreement, or otherwise.
- 1.1.12 NERC Compliance Registry:** A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13 NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan:** The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14 Periodic Data Submittals:** Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15 Regional Compliance Registry:** A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within a Regional Entity's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16 Regional Implementation Plan:** An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance

## Compliance Monitoring and Enforcement Program

with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.

- 1.1.17** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.18** Remedial Action Directive: An action (other than a penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.19** Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.20** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the Compliance Enforcement Authority and that are included for monitoring in the Regional Implementation Plan.
- 1.1.21** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.
- 1.1.22** Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

## Compliance Monitoring and Enforcement Program

### 2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

The Compliance Enforcement Authority shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. The Compliance Enforcement Authority shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within the Compliance Enforcement Authority's area of responsibility. Each Registered Entity shall inform the Compliance Enforcement Authority promptly of changes to its registration information. The Compliance Enforcement Authority shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The Compliance Enforcement Authority shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The Compliance Enforcement Authority will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The Compliance Enforcement Authority will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

Each Regional Entity shall develop, maintain, and provide to NERC a Regional Compliance Registry with updates as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. [P 30] The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard. [P 35]



## Compliance Monitoring and Enforcement Program

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The Compliance Enforcement Authority will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by the Compliance Enforcement Authority through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

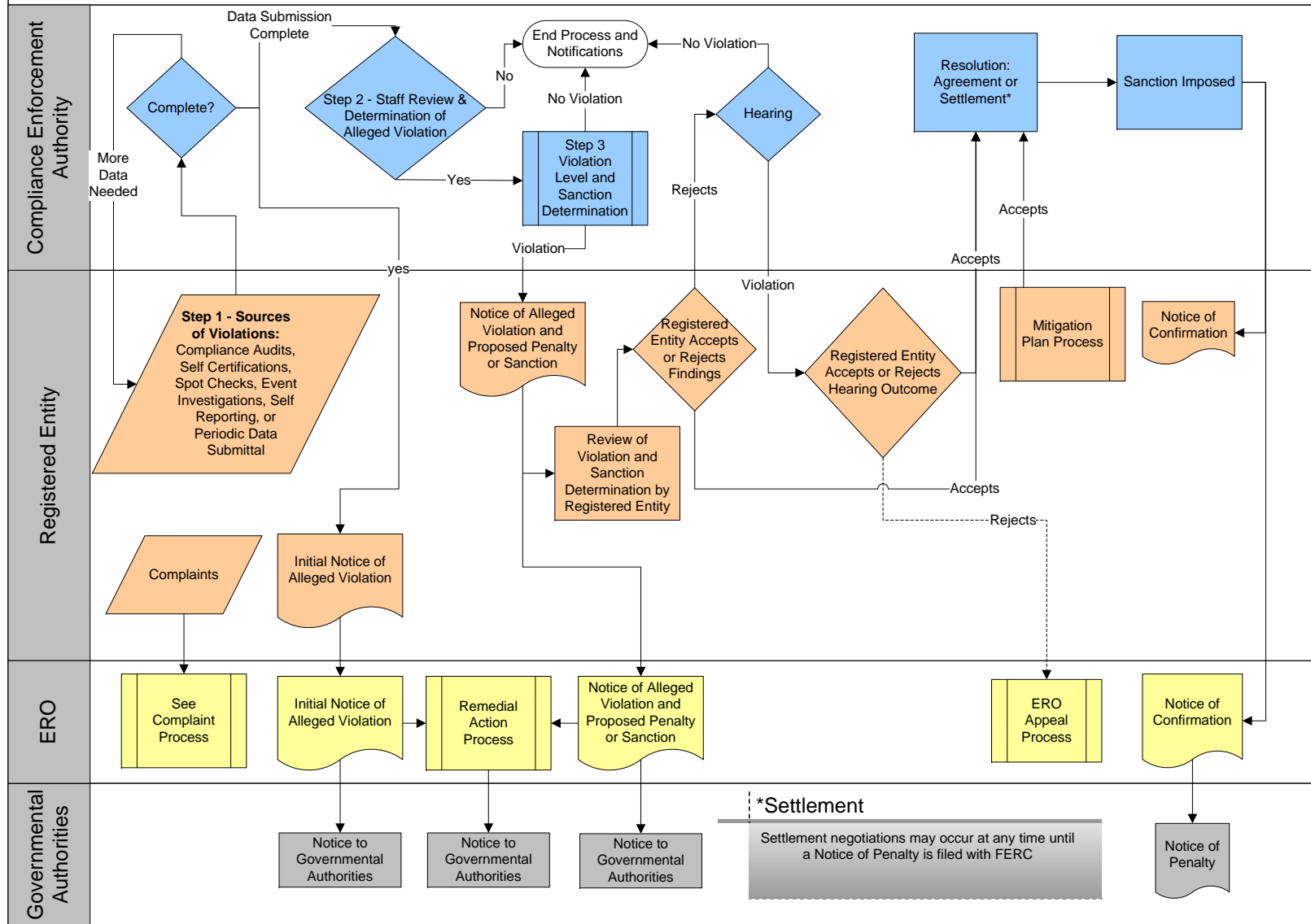
Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.

# Compliance Monitoring and Enforcement Program

## NERC Compliance Monitoring and Enforcement Program Overview



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted Accounting Auditing [P 14 note 11] Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:<sup>1</sup>

- The Compliance Enforcement Authority distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, the Compliance Enforcement Authority informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the Regional Entity provides the audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the Compliance Audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the Compliance Audit. The audit team follows NERC audit guidelines in the implementation of the Compliance Audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an

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<sup>1</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

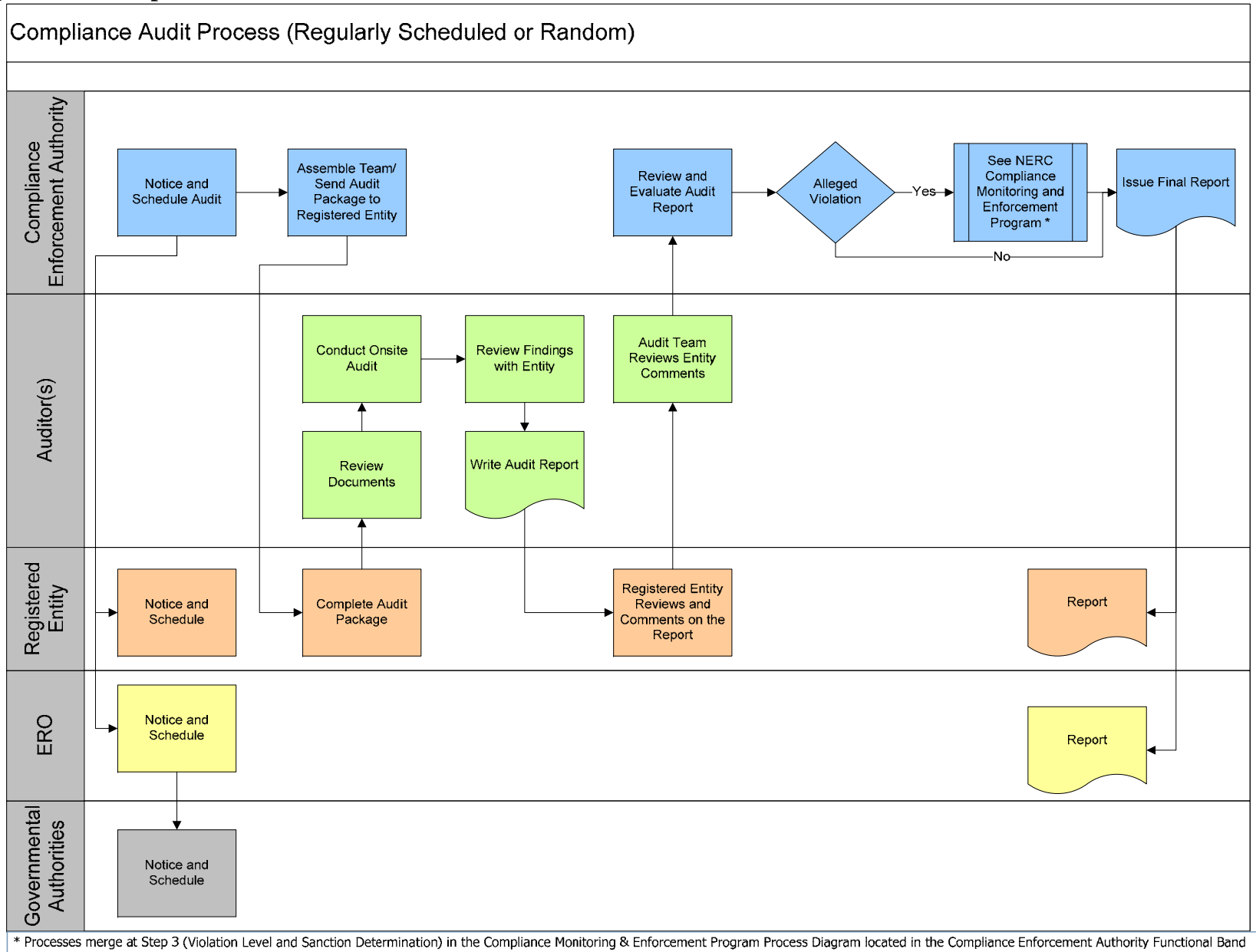
## Compliance Monitoring and Enforcement Program

audit report, including an assessment of compliance with the Reliability Standards, to the Compliance Enforcement Authority.

- The Compliance Enforcement Authority reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

**Figure 3.1 – Compliance Audit Process**



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule**

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

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

### **3.1.3 Frequency of Compliance Audits**

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the Compliance Enforcement Authority if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the Compliance Enforcement Authority or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated, the Compliance Enforcement Authority shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### **3.1.4 Scope of Compliance Audits**

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### **3.1.5 Conduct of Compliance Audits**

The audit team shall be comprised of staff personnel from the Compliance Enforcement Authority and may include contractors and industry volunteers as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient audit team. The audit team

## **Compliance Monitoring and Enforcement Program**

leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any Regional Entity Compliance Audit team either as an observer or as an audit team member as determined by the Regional Entity. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit. The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

### **3.1.6 Compliance Audit Reports**

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains

## **Compliance Monitoring and Enforcement Program**

recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. Regional Entities will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or the Compliance Enforcement Authority until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the Compliance Enforcement Authority pursuant to the provisions of Section 5.0.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### **3.2 Self-Certification**

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.



## Compliance Monitoring and Enforcement Program

### 3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**:<sup>2</sup>

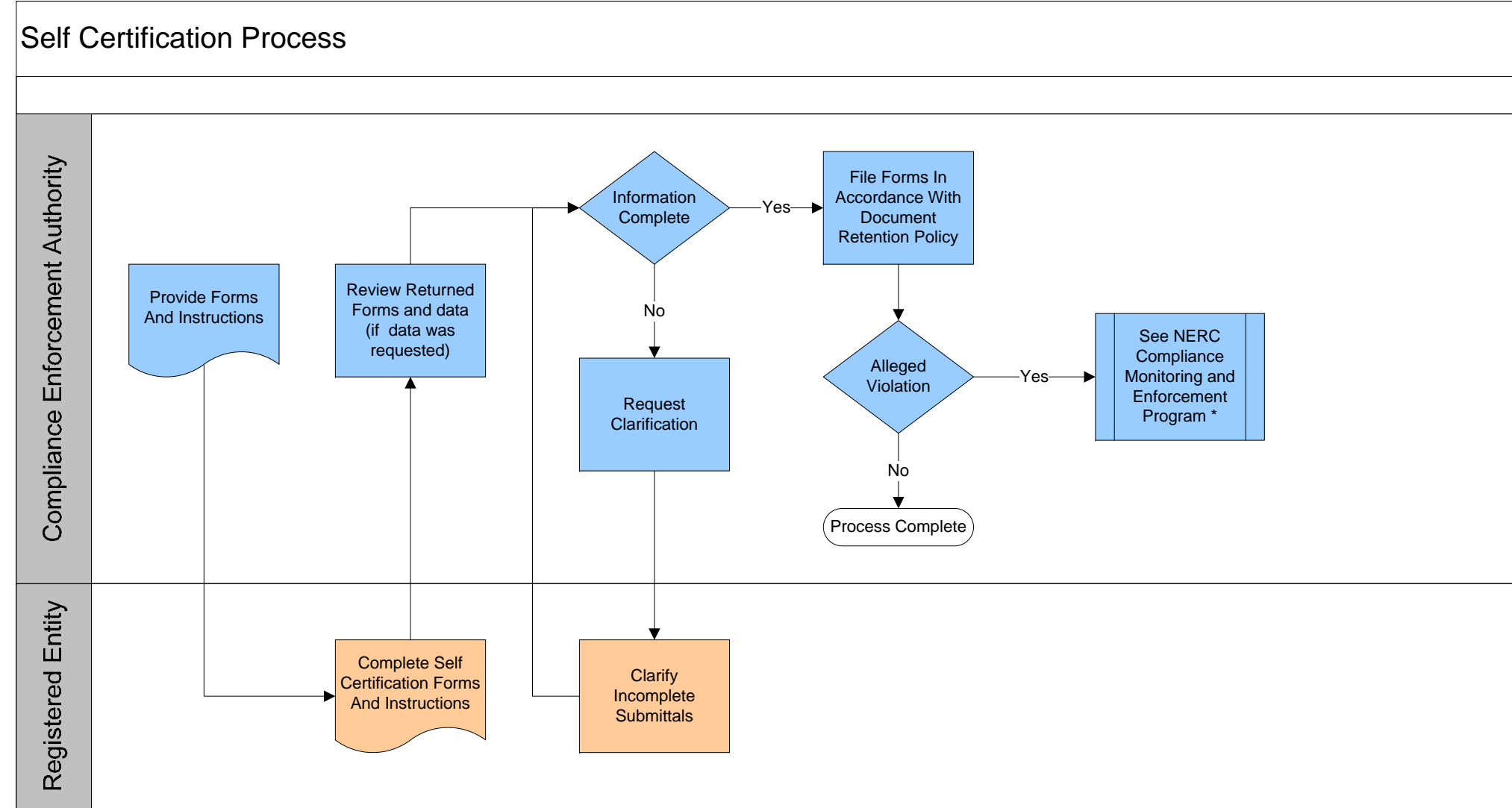
- The Compliance Enforcement Authority posts and updates the reporting schedule and informs Registered Entities. The Compliance Enforcement Authority ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>2</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Function

## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by the Compliance Enforcement Authority. Spot Checking may be initiated by the Compliance Enforcement Authority at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The Compliance Enforcement Authority then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by the Compliance Enforcement Authority as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>3</sup>

- The Compliance Enforcement Authority notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the information to be submitted or available for review.
- The Compliance Enforcement Authority, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by the Compliance Enforcement Authority is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking Team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the Compliance Enforcement Authority in the format specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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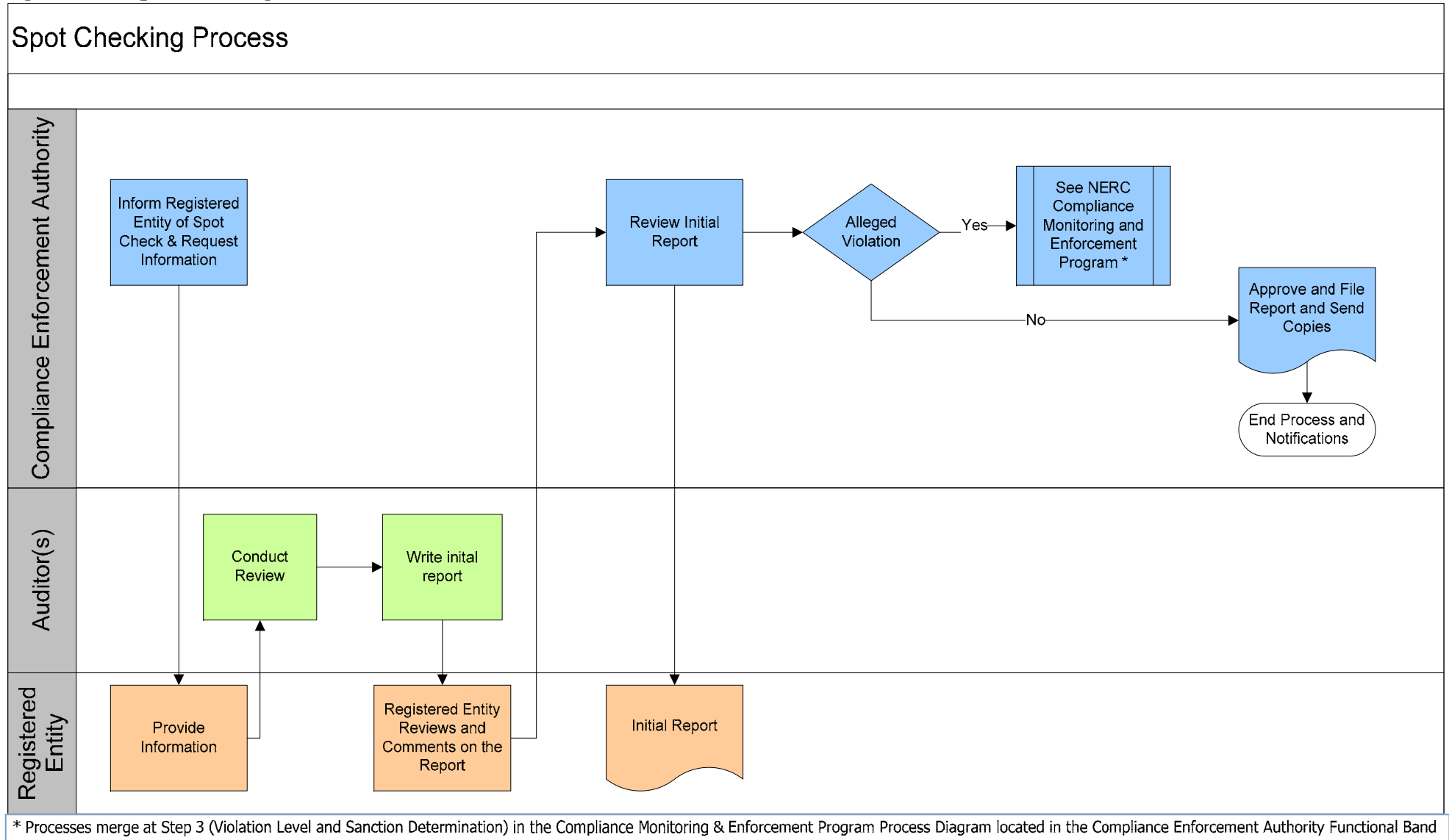
<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.

## Compliance Monitoring and Enforcement Program

- The Compliance Enforcement Authority completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by the Compliance Enforcement Authority ~~or, NERC, FERC or another Applicable Governmental Authority~~ [P 32] in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>4</sup> The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

~~FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. [P 32]~~ If an Applicable Governmental Authority other than FERC initiates an ~~investigation~~ ~~Compliance Violation Investigation~~ of a U.S.-related matter, NERC shall provide notice to FERC of the ~~investigation~~ ~~Compliance Violation Investigation~~ [P 32] prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC ~~shall identify the other Applicable Governmental Authority,~~ [P 30] shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an ~~investigation~~ ~~Compliance Violation Investigation~~ [P 32] of a non-U.S.-related matter, NERC shall provide notice of the ~~investigation~~ ~~Compliance Violation Investigation~~ [P 32] to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the ~~investigation~~ ~~Compliance Violation Investigation~~ [P 32] prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the ~~investigation~~ ~~Compliance Violation Investigation~~ [P 32] to ensure compliance with regulations of the other Applicable Governmental

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<sup>4</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate ~~Compliance Violation~~ ~~Investigations~~ [P 32] into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1:**<sup>5</sup>

- The Compliance Enforcement Authority is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for its [Compliance Violation Investigation](#), the [Compliance Violation Investigation](#) [P 32], as it unfolds, need not be limited to this scope.
- NERC assigns a NERC staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the [Compliance Violation Investigation](#) [P 32] team and their recent employment history. The Registered Entity may object to any individual on the [Compliance Violation Investigation](#) [P 32] team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the [Compliance Violation Investigation](#) team [P 32]. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.

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<sup>5</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to an [Compliance Violation Investigation \[P 32\]](#) may object to any member of the [Compliance Violation Investigation \[P 32\]](#) team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the [Compliance Violation Investigation \[P 32\]](#) of the Registered Entity.
- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the [Compliance Violation Investigation \[P 32\]](#) has been completed. NERC will in turn notify FERC and, if the [Compliance Violation Investigation \[P 32\]](#) pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information

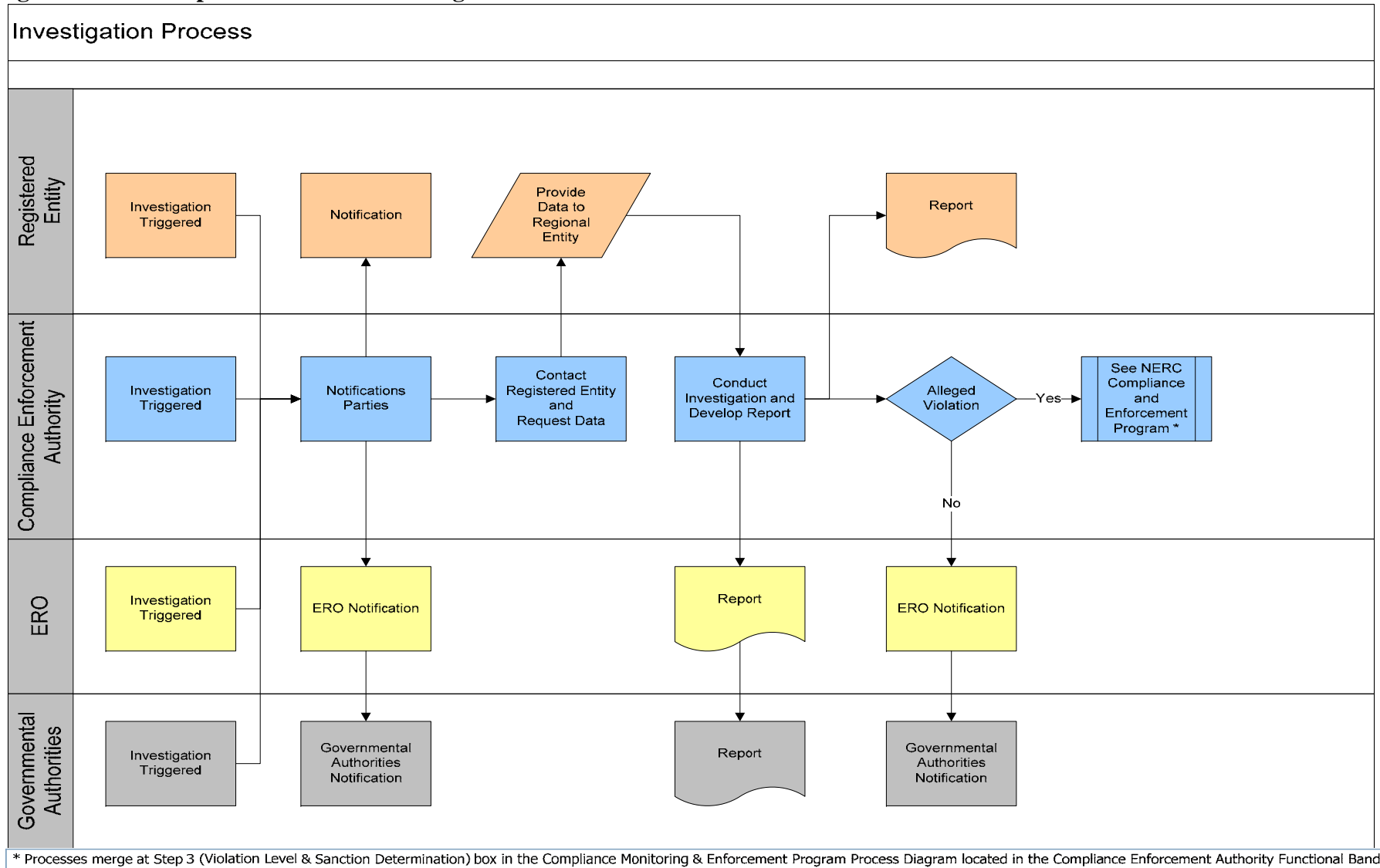


## Compliance Monitoring and Enforcement Program

that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>6</sup>

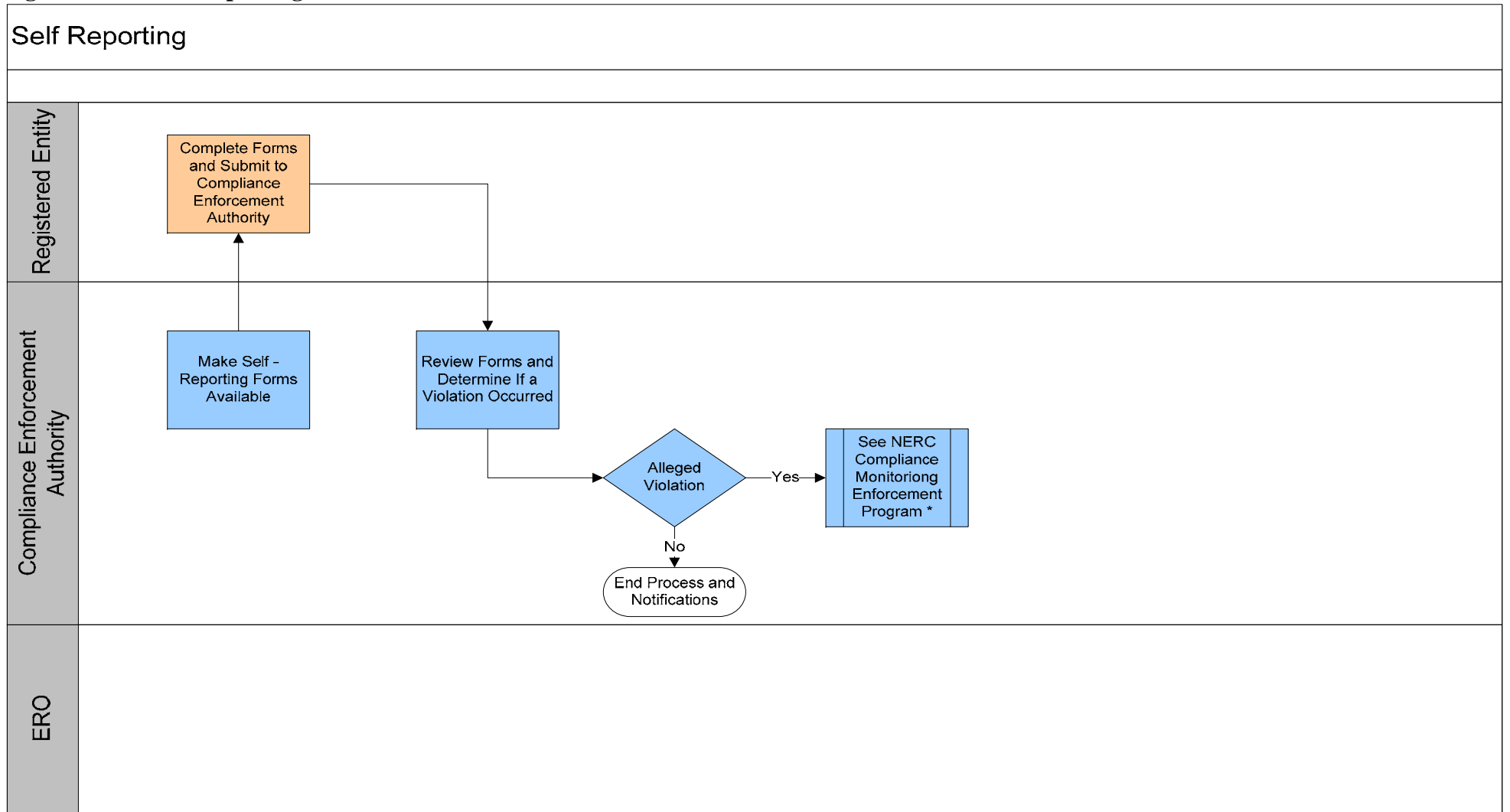
- The Compliance Enforcement Authority posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>6</sup>This process normally completes within sixty (60) days following the Compliance Enforcement Authority's receipt of data.

# Compliance Monitoring and Enforcement Program

## Figure 3.5.1 – Self Reporting Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the Compliance Enforcement Authority, or on an as-needed basis. Requests for data submittals will be issued by the Compliance Enforcement Authority to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>7</sup>

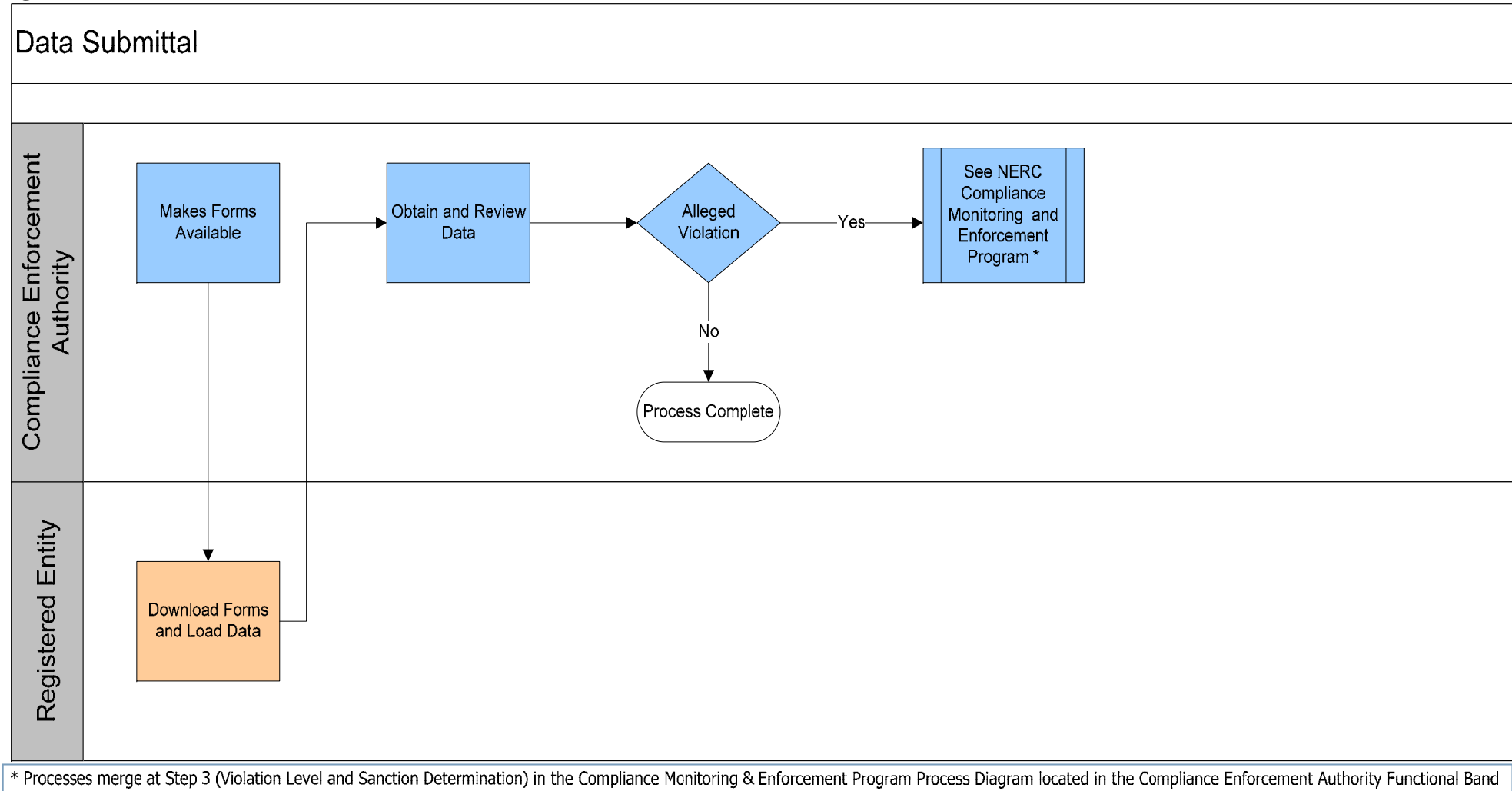
- The Compliance Enforcement Authority posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The Compliance Enforcement Authority ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its web site.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Reliability Standard and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.

## Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The Compliance Enforcement Authority shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The Compliance Enforcement Authority shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. A Regional Entity will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures, (2) where the Regional Entity determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The Regional Entity will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>8</sup>

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and Regional Entity Web sites.

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<sup>8</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

## Compliance Monitoring and Enforcement Program

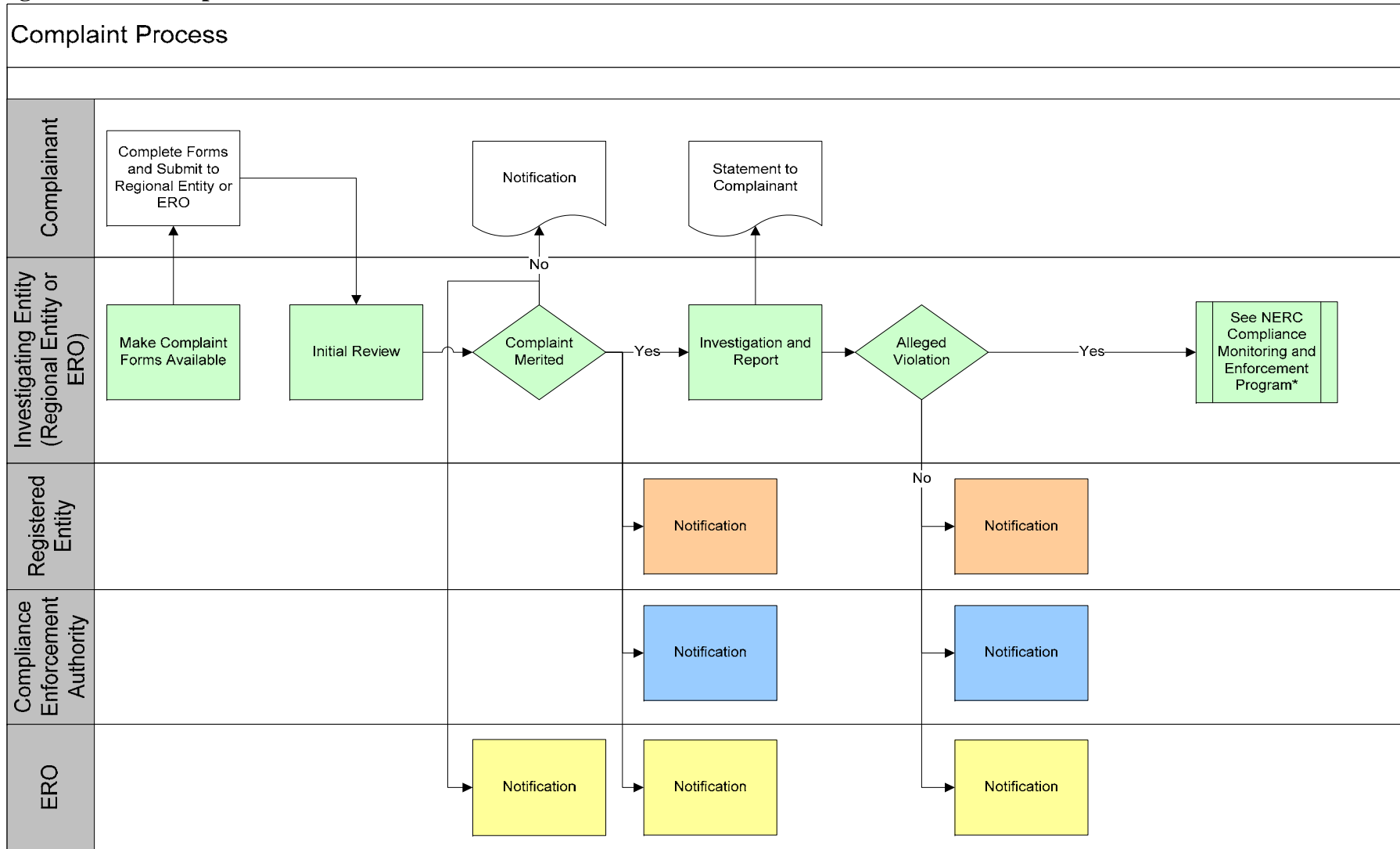
The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment of whether the initiation of a Compliance Violation Investigation is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.



# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## **Compliance Monitoring and Enforcement Program**

### **3.8.2 Anonymous Complainant Notification Procedure**

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>9</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting possible violations to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## **4.0 ANNUAL IMPLEMENTATION PLANS**

### **4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan**

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### **4.2 Regional Entity Implementation Plan**

By November 1 of each year, Regional Entities will submit a Regional Implementation Plan for the following calendar year to NERC for approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's Web site.

## **5.0 ENFORCEMENT ACTIONS**

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and each Regional

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<sup>9</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

Entity shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the Regional Entity.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

If the Compliance Enforcement Authority alleges that a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The Compliance Enforcement Authority may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that

## Compliance Monitoring and Enforcement Program

submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;

- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedures**, and
- (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from the Compliance Enforcement Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the notice of the penalty or sanction or other enforcement action will then be processed and issued to the Registered Entity.

### 5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and sanction (if applicable), in which case the Compliance Enforcement Authority shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the Compliance Enforcement Authority a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will become a Confirmed Violation when filed by NERC with FERC or other Applicable Governmental Authority.

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If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying the Compliance Enforcement Authority's designated hearing representative.<sup>10</sup>

### 5.3 Hearing Process for Compliance Hearings

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

### 5.4 Settlement Process

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC or another Applicable Governmental Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The 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 the Regional Entity and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the Regional Entity will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled

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<sup>10</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the Compliance Enforcement Authority, the Registered Entity may file a request for hearing with the Compliance Enforcement Authority.

## Compliance Monitoring and Enforcement Program

(regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, [and a copy of any Mitigation Plan that is agreed to as part of the settlement.](#) [P 55] The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:<sup>11</sup>

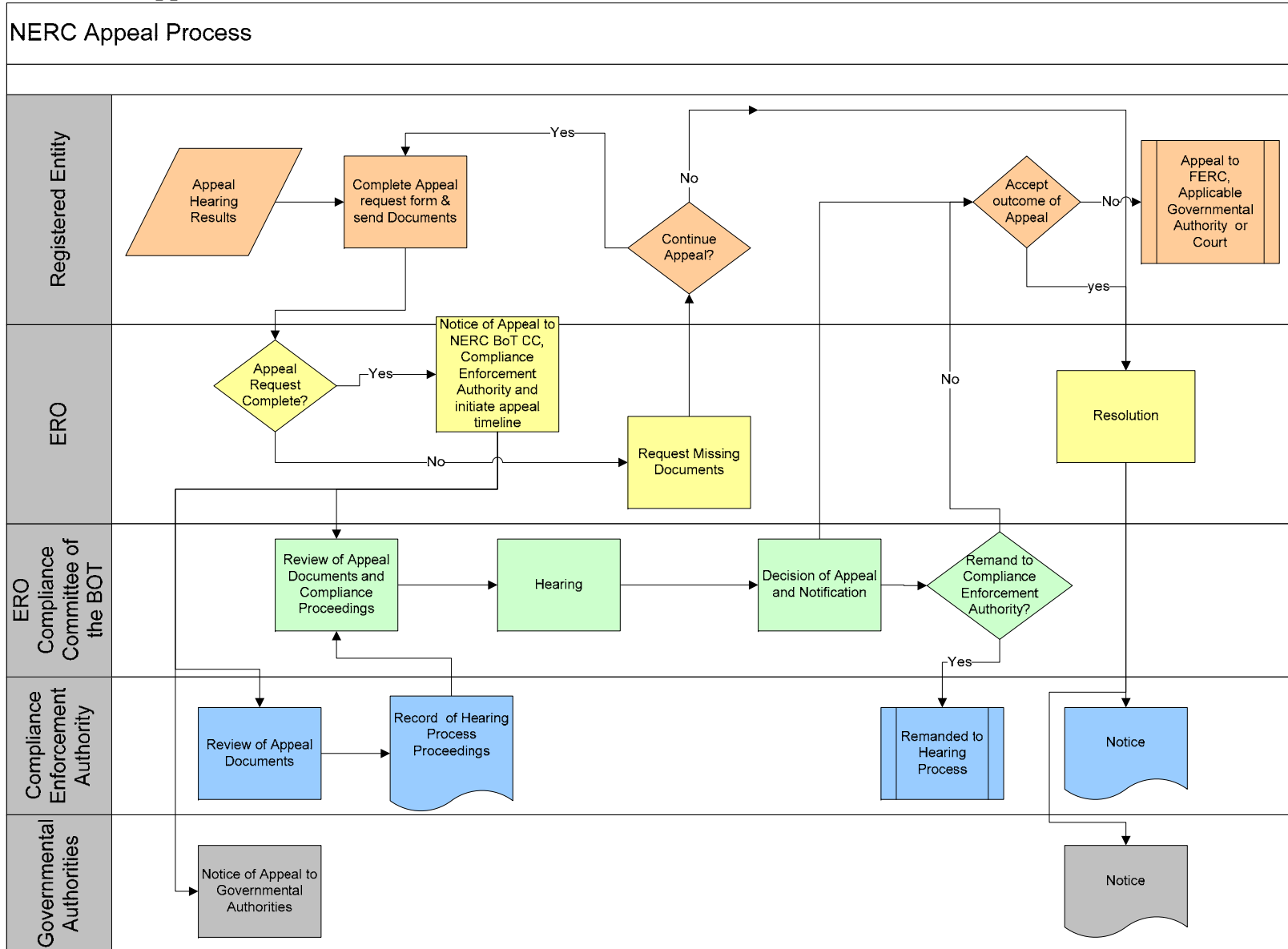
On appeal, NERC shall either affirm the Regional Entity decision or remand to the Regional Entity with reasons for its remand, which may include a direction to the Regional Entity to revise the decision. If NERC directs the Regional Entity to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of the Regional Entity whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

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<sup>11</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

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Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty**

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the Regional Entity to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the Regional Entity, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

### **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

#### **6.1 Requirement for Submission of Mitigation Plans**

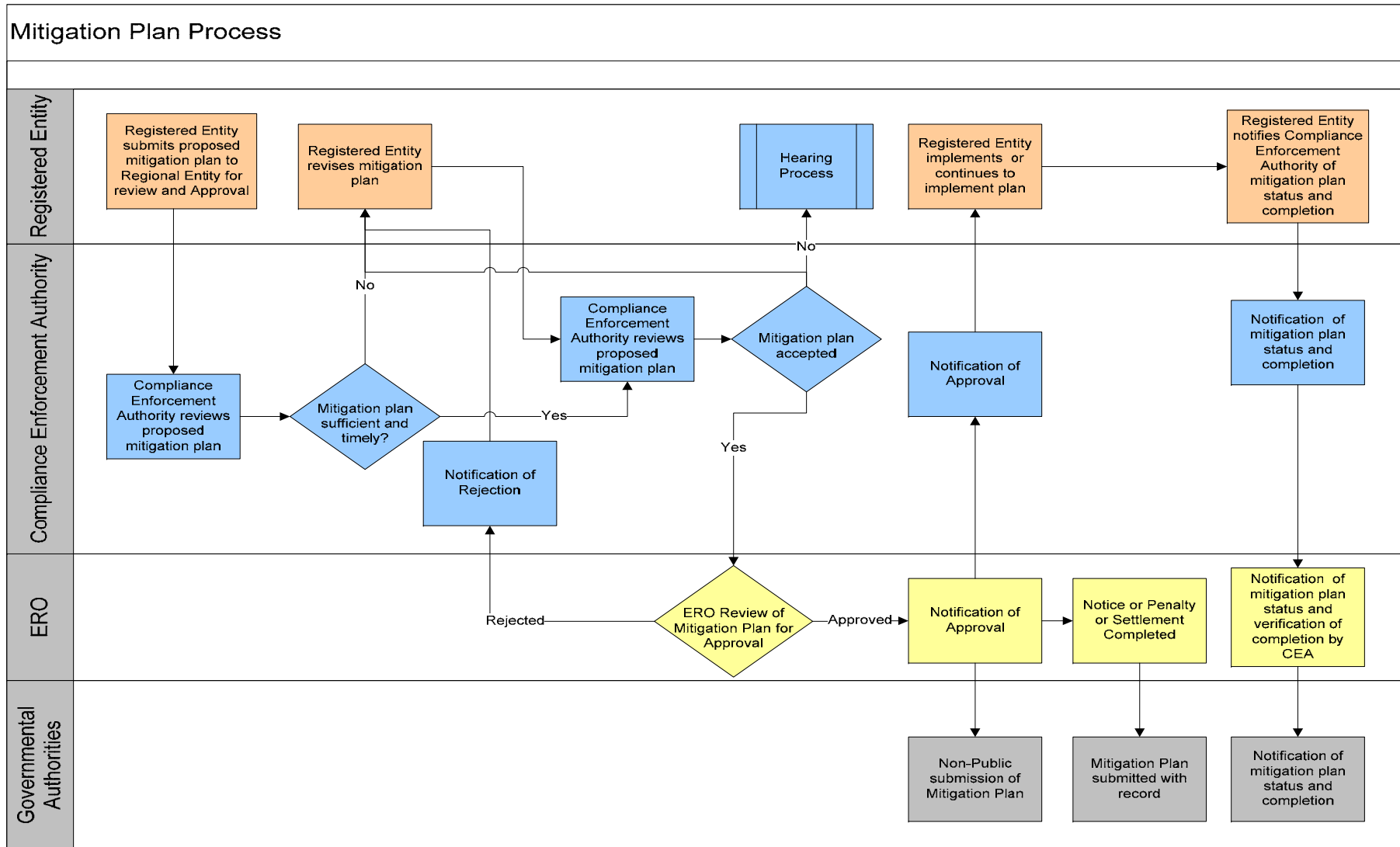
A Registered Entity found to be in violation of a Reliability Standard shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.



# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process



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### 6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### 6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The Compliance Enforcement Authority will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including: (i) short

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assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the [Regional Entity acting as \[P 54\]](#) Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### 6.4 Submission of Mitigation Plans

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the [Regional Entity acting as \[P 54\]](#) Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority

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before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

### 6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted. [P 50]

If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Regional Entities will notify NERC and the Registered Entity [P 51] within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, will notify the Regional Entity and, ~~which will in turn notify~~ the Registered Entity; [P 52] as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC. [P 54]

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NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC ~~shall~~may subsequently publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part of the public posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard in accordance with Section 5.4. [P 55].

### 6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Regional Entities will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### 6.7 Recordkeeping

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

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.

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- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

### 7.0 REMEDIAL ACTION DIRECTIVES

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Regional Entity shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. The Compliance Enforcement Authority will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

## Compliance Monitoring and Enforcement Program

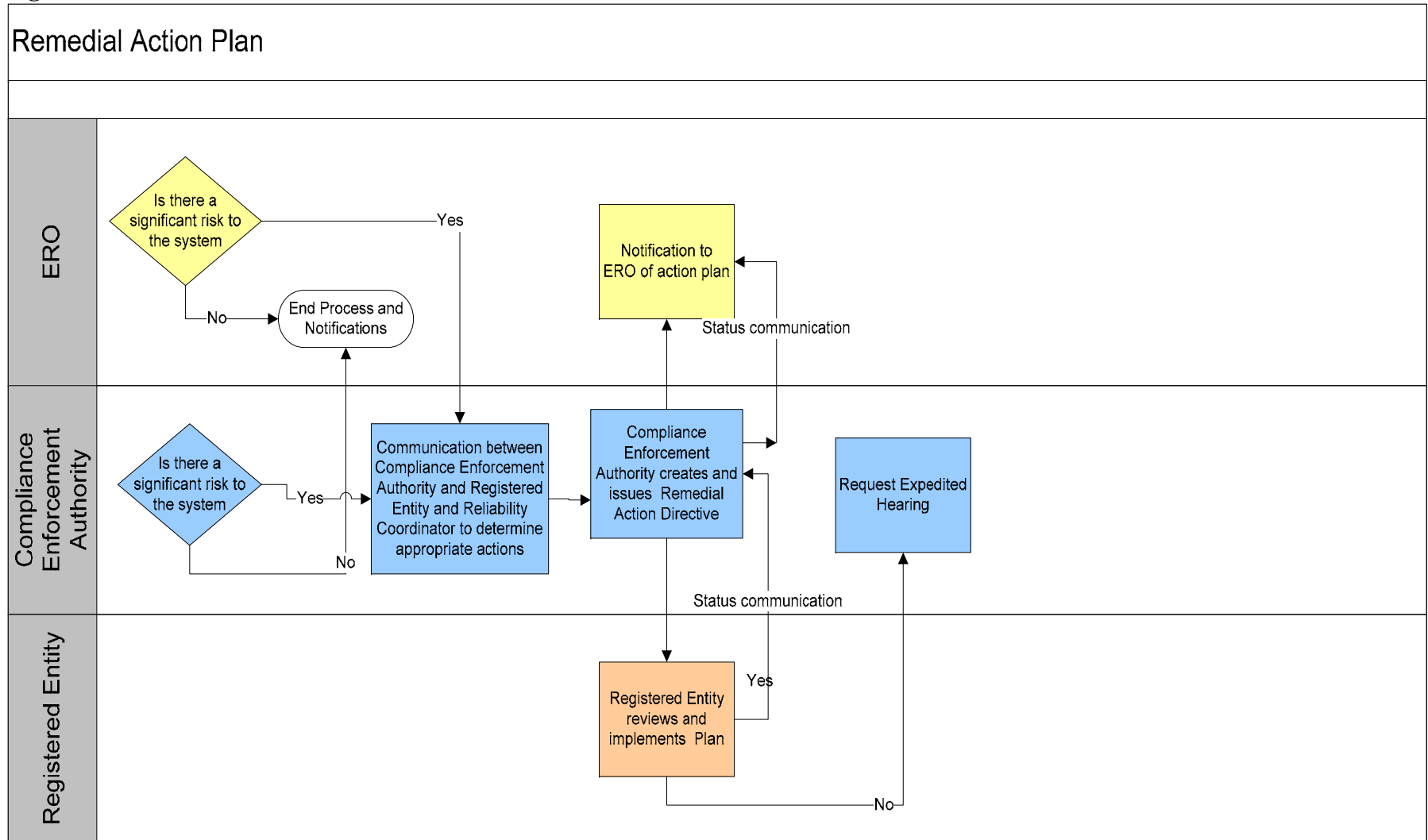
The Regional Entity will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.

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**Figure 7.0 – Remedial Action Process**





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### 8.0 REPORTING AND DISCLOSURE

Regional Entities shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19), containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

Regional Entities shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the Regional Entity through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the Regional Entity shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority, within two (2) business days of receiving such a report from the Regional Entity; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

Regional Entities shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.

Regional Entities shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, Regional Entities will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

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NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the Regional Entity to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its Web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

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

## **Compliance Monitoring and Enforcement Program**

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

The Compliance Enforcement Authority will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

#### PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard for which the Compliance Enforcement Authority has requested data, information, or other reports. The Compliance Enforcement Authority however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

Step 1: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's designated contact.

Step 2: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).

Step 3: The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's chief executive officer or equivalent (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).

A full Compliance Audit may be scheduled at this step.

Step 4: Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.

Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.

ATTACHMENT 2 - HEARING PROCEDURES

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# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into (i) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a [HEARING BODY] established by the Compliance Enforcement Authority. The composition of the [HEARING BODY], after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the [HEARING BODY] on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.

#### 1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the [HEARING BODY], for good cause shown, either upon the Hearing Officer’s or the [HEARING BODY]’s own motion or upon the motion of any Participant.

#### 1.1.3 Standards for Discretion

The Compliance Enforcement Authority’s discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in Compliance Enforcement Authority proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant’s failure to act diligently and in good faith.
- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.

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- d) **Balanced Decision-Making** - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the Compliance Enforcement Authority's conflict of interest policy.
- e) **Impartiality** - Persons appearing before the [HEARING BODY] should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) **Expedition** - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### **1.1.4 Interpretation**

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

### **1.1.5 Definitions**

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

“Bulk-Power System,” for the purposes of these Hearing Procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk,” as designated by the Compliance Enforcement Authority.

“Compliance Enforcement Authority’s area of responsibility” means the Compliance Enforcement Authority’s corporate region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s area of responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.



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“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

“Director of Compliance” means the Director of Compliance of the Compliance Enforcement Authority, who is responsible for the management and supervision of Compliance Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to these Hearing Procedures.

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *ERO Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s violation and take into consideration any timely efforts made by the Registered Entity to remedy the violation.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

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“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies the Compliance Enforcement Authority’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the [HEARING BODY].

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

#### **1.2.1 Contents of Filings**

All filings made with [HEARING BODY] must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other documents; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

#### **1.2.2 Form of Filings**

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.

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- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

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

Filings shall be made with the Clerk of the Compliance Enforcement Authority located at its principal office. The office will be open from [*Compliance Enforcement Authority business hours*] local time each day except Saturday, Sunday, legal holidays and any other day declared by the Compliance Enforcement Authority.

#### **b) When to File**

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the [HEARING BODY]. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than [*Compliance Enforcement Authority close of business*] local time on the date specified.

#### **c) How to File**

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system by the Compliance Enforcement Authority.

#### **d) Number of Copies to File**

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the [HEARING BODY] with a copy of each filing.

#### **e) Signature**

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

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### **f) Verification**

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the [HEARING BODY]. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.

### **g) Certificate of Service**

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

## **1.2.4 Service**

### **a) Service List**

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Director of Compliance and the Registered Entity's designated agent for service [as registered with the Compliance Enforcement Authority] shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

### **b) By Participants**

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

### **c) By the Clerk**

The Clerk shall serve all issuances of the Hearing Officer and [HEARING BODY] upon the members of the [HEARING BODY] and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Clerk shall transmit a copy of the record of a proceeding to the ERO at the time it serves the ERO with either (1) a notice of penalty, or (2) a [HEARING BODY] final order that includes a notice of penalty.

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### **d) Effective Date of Service**

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service of a document upon the Participant, four (4) days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

#### **1.2.5 Computation of Time**

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the office of the Compliance Enforcement Authority is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the office of the Compliance Enforcement Authority is closed.

#### **1.2.6 Extensions of Time**

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or [HEARING BODY] for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or [HEARING BODY] may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

#### **1.2.7 Amendments**

Amendments to any documents filed in a proceeding may be allowed by the Hearing Officer or the [HEARING BODY] upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

#### **1.2.8 Transcripts**

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

The Compliance Enforcement Authority will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay

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for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

### **1.2.9 Rulings, Notices, Orders and Other Issuances**

Any action taken by the Hearing Officer or the [HEARING BODY] shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the [HEARING BODY]. All notices of hearings shall set forth the date, time and place of hearing.

### **1.2.10 Location of Hearings and Conferences**

All hearings and oral arguments shall be held at the principal office of the Compliance Enforcement Authority unless the Hearing Officer or [HEARING BODY] designates a different location.

### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the [HEARING BODY], except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

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

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

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

No hearing, oral argument or meeting of the [HEARING BODY] shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or [HEARING BODY], or any transcript, made in any proceeding shall be publicly released unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the [HEARING BODY], the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authorities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed

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by the letters “[RE]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, [HEARING BODY] members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

## **1.3 Initiation of the Hearing Process**

### **1.3.1 Registered Entity’s Option to Request a Hearing**

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these Hearing Procedures, a Registered Entity may file a statement with the Compliance Enforcement Authority requesting a hearing if either:

- a) The Registered Entity files a response to a notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or
- b) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan.

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity’s proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent) **[P**

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[P 60] requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) [P 60] requests the shortened hearing procedure, Compliance Staff and any other Participant [P 60] shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant [P 60] agrees to use the shortened hearing procedure. If Staff or another Participant [P 60] makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities [P 60] shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- a) The Registered Entity's Self-Reporting of a violation;
- b) The notice of Alleged Violation and the Registered Entity's response thereto; and/or
- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

### 1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days after the prehearing conference, the Staff shall file:



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- 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:
- 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Paragraph 1.7.5 and within seven (7) days thereafter, a reply brief designated "Brief in Reply to Exceptions."
- h) The [HEARING BODY] shall strive, but is not required, to issue a final order within ninety (90) days of the notice of hearing.

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

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### 1.4 General Hearing Procedure

#### 1.4.1 Notice of Hearing

Within seven (7) days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) days after the notice of hearing is issued.

#### 1.4.2 Hearing Officer

The Compliance Enforcement Authority may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the [HEARING BODY] as set forth in Paragraph 1.4.3. Members of the [HEARING BODY] may attend any aspect of the hearing.

The [HEARING BODY] may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for submission of the matter to the [HEARING BODY] for final decision through the presentation to the [HEARING BODY] of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- 3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise [and issue orders concerning](#) discovery [\[PP 72-73\]](#);
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;
- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;

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- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue protective orders pursuant to Paragraph 1.5.10;
- 11) To issue initial opinions; and
- 12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 [HEARING BODY]**

The [HEARING BODY] is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

- 1) The [HEARING BODY] shall receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written comments, testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.
- 2) The [HEARING BODY] or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The [HEARING BODY] shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the [HEARING BODY] shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- 4) To the extent that the [HEARING BODY] disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Paragraph 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.

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- 5) The [HEARING BODY] shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the [HEARING BODY] shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

### 1.4.4 Interlocutory Review

A Participant shall be allowed to seek interlocutory review by the [HEARING BODY] of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the [HEARING BODY], the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the [HEARING BODY] within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the [HEARING BODY].

On review of a Hearing Officer's ruling, the [HEARING BODY] may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The [HEARING BODY] may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the [HEARING BODY], and (ii) majority vote of the members of the [HEARING BODY] voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the [HEARING BODY'S] action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the [HEARING BODY] based on a finding of exceptional circumstances.

[A non-Participant that has been ordered by the Hearing Officer pursuant to paragraph 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the \[HEARING BODY\] of the Hearing Officer's](#)

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order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to paragraph 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide document, information or testimony. [PP 72-73]

### 1.4.5 Disqualification

A Hearing Officer, Technical Advisor or member of the [HEARING BODY] shall recuse himself or herself from a proceeding if participation would violate the Compliance Enforcement Authority's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the [HEARING BODY] from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

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

### 1.4.6 Technical Advisor

The Hearing Officer and/or the [HEARING BODY] may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

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

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

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the [HEARING BODY], the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
  - 2) the [HEARING BODY], the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;
    - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the [HEARING BODY], the Hearing Officer and any Technical Advisor.
- d) Any member of the [HEARING BODY], the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

### **1.4.8 Appearances**

Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual

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authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

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

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

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

### **1.4.10 Consolidation of Proceedings**

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

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

## **1.5 Prehearing Procedure**

### **1.5.1 ~~Waiver of Time Limits~~ [Intentionally left blank]**

[Intentionally left blank]

### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

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

### **1.5.3 Summary Disposition**

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

### **1.5.4 Status Hearings**

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

### **1.5.5 Motions**

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise



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ordered by a Hearing Officer, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

### 1.5.6 Experts

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that [unauthorized public \[P 65\]](#) disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

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

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

(1) ~~Unless otherwise provided by order of the Hearing Officer or [HEARING BODY],~~ [w](#)Within five (5) days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. [\[P 68\]](#) Such documents shall include but are not limited to:

(A) requests for information to the Respondent;

(B) every written request, including e-mail, directed to persons not employed by the Compliance Enforcement Authority to provide information or documents or to be interviewed;

(C) the documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;

(E) all other documents obtained from the Respondent; and

(F) all other documents obtained from persons not employed by the Compliance Enforcement Authority.

[The sole bases pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7\(b\) \[P 68\]; provided, ~~H~~however, \[that\]\(#\) the documents made available for inspection and copying need not include \(i\) exact copies of documents the Respondent previously provided to Staff, and \(ii\) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.](#)

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or [HEARING BODY] shall oversee the Staff's

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designation of documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary.

(3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent not later than fourteen (14) days after Staff receives such documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional documents available to the Respondent not less than ten (10) days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

(4) Nothing in subparagraph (a)(1) shall limit the discretion of the Compliance Enforcement Authority to make any other document available to the Respondent or the authority of the Hearing Officer to order the production of any other documents or information by any Participant.

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

(1) Staff may withhold a document from inspection and copying by the Respondent if:

(A) the document is privileged to Staff or constitutes attorney work product of Staff's counsel (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);

(B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

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

(2) Nothing in Subparagraph (b)(1)(B), (C) or (D) authorizes Staff to withhold a document, or a part thereof, that contains exculpatory evidence. Nothing in Subparagraph (b)(1) requires Staff to withhold a document from disclosure.

### **(c) Withheld Document List**

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). ~~A list of withheld documents shall also be provided by any other Participant required to produce documents, at the time the documents are required to be produced.~~ [P 14 note 11] Upon review, the Hearing Officer may order Staff to make ~~the list or~~ any document withheld available to the Respondent(s) for inspection and copying.

### **(d) Timing of Inspection and Copying**

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

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

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

### **(f) Copying Costs**

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

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

In the event that a document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff, ~~or a document required to be produced by any other Participant is not produced to the Respondent~~ no rehearing or amended decision of a

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proceeding already heard or decided shall be required where the failure to make the document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff ~~or another Participant~~ to produce a document, the burden shall be on Staff ~~or the other Participant that failed to produce the document~~ to show that such failure was harmless error. The Hearing Officer, or, upon review, the [HEARING BODY] shall determine whether the failure to make the document available was harmless error. [P 14 note 11]

### 1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through ~~409~~408 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.4089 [PP 72-73], including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, ~~and~~ requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing. [PP 72-73] Unless otherwise directed by the Hearing Officer or [HEARING BODY] upon motion by a Participant or by the Hearing Officer, or by the [HEARING BODY] on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through ~~408 and~~ 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through ~~385.408 and~~ 385.410 and 385.510(e) [PP 72-73], which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (a) The provisions of Subparagraphs ~~(b) through (g)~~(d), (e) and (f) [P 14 note 11] of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the [HEARING BODY] ~~do not~~ have the authority to issue ~~subpoenas to, or otherwise orders to or~~ compel the appearance by or production of documents or information by, only any person or entity that (i) is not a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the [HEARING BODY] do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony. [PP 72-73]
- (d) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony. [PP 72-73]
- ~~(d)~~(e) References to the “Commission” in Rules 402 through ~~408 and~~ 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1)

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and 405(b), ~~and~~ the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the [HEARING BODY], ~~and~~ (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or [HEARING BODY]. [PP 72-73].

~~(e)~~(f) Unless otherwise ordered by the Hearing Officer or [HEARING BODY], a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, ~~or~~ request for admissions, or order to produce or provide documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order. [PP 72-73]

~~(g)~~ A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying. [P 14 note 11]

~~(h)~~ In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the [HEARING BODY] shall determine whether the failure to make the document available was harmless error. [P 14 note 11]

~~(f)~~(i) Unless otherwise ordered by the Hearing Officer or [HEARING BODY], all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.

~~(g)~~(j) Notwithstanding ~~(e)~~(f) and ~~(f)~~(i), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

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

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disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### 1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

Unless the Hearing Officer orders otherwise and with the exception of [\(i\)](#) any adverse Participant examination pursuant to Paragraph 1.6.16 [and \(ii\) the testimony and documents of a non-Participant provided pursuant to an order to produce or provide documents, information or testimony \[PP 72-73\]](#), all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination [\(other than documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce documents\) \[PP 72-73\]](#), the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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

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

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

### 1.5.10 Protective Orders

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- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce documents, information or testimony [PP 72-73], may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).
- c) A ~~Participant submitting a~~ [PP 72-73] motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
- e) The protective order shall identify the data, documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all

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individuals other than those entitled to view the proprietary information in accordance with the protective order.

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

The Hearing Officer or the [HEARING BODY] may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memoranda prior to the evidentiary hearing that outline each Participant's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. The purpose of such memoranda will be to aid the Hearing Officer and [HEARING BODY] in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum. The Hearing Officer may establish page limitations on such submissions.

## **1.6 Evidentiary Hearing Procedure**

### **1.6.1 Evidentiary Hearings**

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

### **1.6.2 Order of Receiving Evidence**

In all proceedings Compliance Staff shall open and close.

### **1.6.3 Opening and Closing Statements**

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the [HEARING BODY]. Any Participant's request for such statements, or a Hearing Officer or [HEARING BODY] notice requiring such statements, shall be made at least ten (10) days in advance of the start of the evidentiary hearing.

### **1.6.4 Right of Participant to Present Evidence**

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### **1.6.5 Exhibits**

All material offered in evidence, ~~unless~~except oral testimony allowed by the Hearing Officer allows oral testimony or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony [PP 72-73], shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will



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provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### 1.6.6 Witness Attendance at Evidentiary Hearing

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the [HEARING BODY] have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### 1.6.7 Admission of Evidence

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the [HEARING BODY], in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant [PP 72-73], no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the Compliance Enforcement Authority's policy to discourage witness testimony at an evidentiary

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hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

### **1.6.8 Evidence that is Part of a Book, Paper or Document**

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.6.9 Stipulations**

The Participants may stipulate to any relevant fact or the authenticity of any relevant document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### **1.6.10 Official Notice**

Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the Compliance Enforcement Authority.
- 3) State, provincial and federal statutes and municipal and local ordinances.
- 4) The decisions of state, provincial and federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of the Compliance Enforcement Authority.
- 6) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any

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item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.6.11 Admissibility of Evidence**

Any evidence offered, including that included in a book, paper or document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### **1.6.12 Offer of Proof**

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

### **1.6.13 Reservation of Evidentiary Ruling**

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

### **1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the [HEARING BODY] may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the [HEARING BODY] seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

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A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the [HEARING BODY]. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the [HEARING BODY]. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the evidentiary hearing. Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination. [PP 72-73]

### **1.6.17 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.

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- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### **1.7.2 Other Pleadings**

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### **1.7.3 Draft Initial Opinions**

The Hearing Officer may permit or require Participants to file draft initial opinions that set forth the Participants' proposed findings of fact and conclusions.

### **1.7.4 Hearing Officer's Initial Opinion**

Except as otherwise ordered by the [HEARING BODY], at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the [HEARING BODY]'s review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the [HEARING BODY] require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 1.5.10.

### **1.7.5 Exceptions**

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.

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- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### **1.7.6 Oral Argument**

The [HEARING BODY] may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified by the [HEARING BODY]. The [HEARING BODY] will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than 48 hours prior to the time and date of oral argument.

### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the [HEARING BODY]'s own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### **1.7.8 [HEARING BODY] Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the [HEARING BODY] shall issue its final order. Issuance of a final order shall require (i) a quorum of the [HEARING BODY], which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the

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number of members normally assigned to the [HEARING BODY], and (ii) majority vote of the members of the [HEARING BODY] voting on the final order (which number of members voting shall not be less than a quorum). The [HEARING BODY] shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The [HEARING BODY] will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled “Final Order and Notice of Penalty”. The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The [HEARING BODY] shall direct the Clerk to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### 1.7.9 The Record

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:

- 1) Notice of Alleged Violation and Registered Entity’s response thereto;
- 2) Registered Entity’s proposed Mitigation Plan and Staff’s statement identifying its disagreement(s) therewith;
- 3) Remedial Action Directives and the Registered Entity’s notice contesting the Remedial Action Directive;
- 4) Registered Entity’s request for a hearing;
- 5) Participant filings, motions, and responses;
- 6) Notices, rulings, orders and other issuances of the Hearing Officer and [HEARING BODY];
- 7) Transcripts;
- 8) Evidence received;
- 9) Written comments submitted in lieu of written testimony;
- 10) Matters officially noticed;
- 11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;

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- 12) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 13) Post-hearing pleadings other than briefs;
- 14) The Hearing Officer's initial opinion;
- 15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 16) The [HEARING BODY]'s final order, any notice of Penalty issued therewith, and the Clerk's notice transmitting the final order to the Participants;
- 17) All notices of ex parte communications; and
- 18) Any notifications of recusal and motions for disqualification of a member of the [HEARING BODY] or Hearing Officer of Technical Advisor and any responses or replies thereto.

### **1.7.10 Appeal**

A Final Order of the [HEARING BODY] may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit to NERC the record of any docket that is the subject of an appealed final order.

## **1.8 Settlement**

Settlements may be entered into at any time pursuant to Section 5.4 of the NERC Compliance Monitoring and Enforcement Program and the Compliance Enforcement Authority's settlement procedures.

## **1.9 Remedial Action Directives**

### **1.9.1 Initiation of Remedial Action Directive Hearing**

Staff] may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. The Compliance Enforcement Authority will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.



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The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.

### **1.9.2 Remedial Action Directive Hearing Procedure**

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the [HEARING BODY] will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the [HEARING BODY]. Oral argument shall not be held.
- f) The [HEARING BODY] shall issue a summary written decision within ten (10) days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.

Within thirty (30) days following issuance of its summary written decision, the [HEARING BODY] shall issue a full written decision. The written decision shall state the conclusions of the [HEARING BODY] with respect to the Remedial Action Directive, and shall explain the reasons for the [HEARING BODY]'s conclusions.

**DOCKET NOS. RR06-1-016/017 ET AL.**

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

**ATTACHMENT 2**

**AMENDMENTS TO THE NERC  
RULES OF PROCEDURE**

**ATTACHMENT 2A: CLEAN VERSION**

**ATTACHMENT 2B: REDLINED VERSION  
(ALL REVISIONS ARE TO SECTION 400)**

**ATTACHMENT 2A:**  
**CLEAN VERSION**



Revised for December 19, 2008  
FERC Order

# **Rules of Procedure**

Effective: [Month, Day], 2009

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## **SECTION 100 — APPLICABILITY OF RULES OF PROCEDURE**

NERC and NERC members shall comply with these rules of procedure. Each regional entity shall comply with these rules of procedure as applicable to functions delegated to the regional entity by NERC or as required by an appropriate governmental authority or as otherwise provided.

Each bulk power system owner, operator, and user shall comply with all rules of procedure of NERC that are made applicable to such entities by approval pursuant to applicable legislation or regulation, or pursuant to agreement.

Any entity that is unable to comply or that is not in compliance with a NERC rule of procedure shall immediately notify NERC in writing, stating the rule of concern and the reason for not being able to comply with the rule.

NERC shall evaluate each case and inform the entity of the results of the evaluation. If NERC determines that a rule has been violated, or cannot practically be complied with, NERC shall notify the applicable governmental authorities and take such other actions as NERC deems appropriate to address the situation.

NERC shall comply with each approved reliability standard that identifies NERC or the electric reliability organization as a responsible entity. Regional Entities shall comply with each approved reliability standard that identifies Regional Entities as responsible entities. A violation by NERC or a Regional Entity of such a reliability standard shall constitute a violation of these Rules of Procedure.



## **SECTION 200 — DEFINITIONS OF TERMS**

### **201. General**

For purposes of NERC rules of procedure, the terms defined in Section 202 shall have the meaning set forth therein. Other terms are defined within particular sections of the rules of procedure. Other terms used but not defined in the rules of procedure shall be defined in NERC's Bylaws, the NERC Glossary of Terms Used in Reliability Standards adopted in conjunction with NERC's Reliability Standards, or in accordance with their commonly understood and used technical meanings in the electric power industry, including applicable codes and standards.

### **202. Specific Definitions**

“Board” means the Board of Trustees of NERC.

“Bulk power system” means facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative irrespective(s) of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

“Confirmed violation” is one for which an entity has: 1) accepted the finding of the violation by a regional entity or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

“Electric reliability organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the bulk power system in the United States. The organization may also have received recognition by applicable governmental authorities in Canada and Mexico to establish and enforce reliability standards for the bulk power systems of the respective countries.

“Entity variance” means an aspect of a reliability standard that applies only within a particular entity or a subset of entities within a limited portion of a regional entity, such as a variance that would apply to a regional transmission organization or particular market or to a subset of bulk power system owners, operators or users. An entity variance may not be inconsistent with or less stringent than the reliability standards as it would otherwise exist without the entity variance. An entity variance shall be approved only through the NERC standards development procedure and shall be made part of the NERC reliability standards.

“ERO governmental authority” is a government agency that has subject matter jurisdiction over the reliability of the bulk power system within its jurisdictional territory. In the United States, the ERO governmental authority is the Federal Energy Regulatory Commission. In Canada, the ERO governmental authority resides with applicable federal and provincial governments who may delegate duties and responsibilities to other entities. Use of the term is intended to be inclusive of all applicable authorities in the United States, Canada, and Mexico, and is not restricted to those listed here.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Reliable operation” means operating the elements of the bulk power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

“Regional criteria” means reliability requirements developed by a regional entity that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Such regional criteria may be necessary to account for physical differences in the bulk power system but are not inconsistent with reliability standards nor do they result in lesser reliability. Such regional criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional reliability standard” means a type of reliability standards that is applicable only within a particular regional entity or group of regional entities. A regional reliability standard may augment, add detail to, or implement another reliability standard or cover matters not addressed by other reliability standards. Regional reliability standards, upon adoption by NERC and approval by the applicable ERO governmental authority(ies), shall be reliability standards and shall be enforced within the applicable regional entity or regional entities pursuant to delegated authorities.

“Reliability standard” means a requirement to provide for reliable operation of the bulk power system, including without limiting the foregoing, requirements for the operation of existing bulk power system facilities, including cyber security protection, and including the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system, but the term does not include any requirement to enlarge bulk power system facilities or to construct new transmission capacity or generation capacity. A reliability standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the applicable governmental authority.

“Variance” means an aspect or element of a reliability standard that applies only within a particular regional entity or group of regional entities, or to a particular entity or class of entities. A variance allows an alternative approach to meeting the same reliability objective as the reliability standard, and is typically necessitated by a physical difference. A variance is embodied within a reliability standard and as such, if adopted by NERC and approved by the ERO governmental authority, shall be enforced within the applicable regional entity or regional entities pursuant to delegated authority.

## **SECTION 300 — RELIABILITY STANDARDS DEVELOPMENT**

### **301. General**

NERC shall develop and maintain reliability standards that apply to bulk power system owners, operators, and users and that enable NERC and regional entities to measure the reliability performance of bulk power system owners, operators, and users; and to hold them accountable for reliable operation of the bulk power systems. The reliability standards shall be technically excellent, timely, just, reasonable, not unduly discriminatory or preferential, in the public interest, and consistent with other applicable standards of governmental authorities.

### **302. Essential Attributes for Technically Excellent Reliability Standards**

1. **Applicability** — Each reliability standard shall clearly identify the functional classes of entities responsible for complying with the reliability standard, with any specific additions or exceptions noted. Such functional classes<sup>1</sup> include: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, interchange authorities, transmission service providers, market operators, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Each reliability standard shall also identify the geographic applicability of the standard, such as the entire North American bulk power system, an interconnection, or within a regional entity area. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.
2. **Reliability Objectives** — Each reliability standard shall have a clear statement of purpose that shall describe how the standard contributes to the reliability of the bulk power system. The following general objectives for the bulk power system provide a foundation for determining the specific objective(s) of each reliability standard:
  - 2.1 **Reliability Planning and Operating Performance** — Bulk power systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions.
  - 2.2 **Frequency and Voltage Performance** — The frequency and voltage of bulk power systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
  - 2.3 **Reliability Information** — Information necessary for the planning and operation of reliable bulk power systems shall be made available to those entities responsible for planning and operating bulk power systems.

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<sup>1</sup> These functional classes of entities are derived from NERC's Reliability Functional Model. When a standard identifies a class of entities to which it applies, that class must be defined in the Glossary of Terms Used in Reliability Standards.

- 2.4 **Emergency Preparation** — Plans for emergency operation and system restoration of bulk power systems shall be developed, coordinated, maintained, and implemented.
- 2.5 **Communications and Control** — Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of bulk power systems.
- 2.6 **Personnel** — Personnel responsible for planning and operating bulk power systems shall be trained and qualified, and shall have the responsibility and authority to implement actions.
- 2.7 **Wide-area View** — The reliability of the bulk power systems shall be assessed, monitored, and maintained on a wide-area basis.
- 2.8 **Security** — Bulk power systems shall be protected from malicious physical or cyber attacks.
3. **Performance Requirement or Outcome** — Each reliability standard shall state one or more performance requirements, which if achieved by the applicable entities, will provide for a reliable bulk power system, consistent with good utility practices and the public interest. Each requirement is not a “lowest common denominator” compromise, but instead achieves an objective that is the best approach for bulk power system reliability, taking account of the costs and benefits of implementing the proposal.
4. **Measurability** — Each performance requirement shall be stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement shall have one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics shall be provided to determine satisfactory performance.
5. **Technical Basis in Engineering and Operations** — Each reliability standard shall be based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
6. **Completeness** — Reliability standards shall be complete and self-contained. The standards shall not depend on external information to determine the required level of performance.
7. **Consequences for Noncompliance** — In combination with guidelines for penalties and sanctions, as well as other ERO and regional entity compliance documents, the consequences of violating a standard are clearly presented to the entities responsible for complying with the standards.
8. **Clear Language** — Each reliability standard shall be stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in

keeping with good utility practices, are able to arrive at a consistent interpretation of the required performance.

9. **Practicality** — Each reliability standard shall establish requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
10. **Consistent Terminology** — To the extent possible, reliability standards shall use a set of standard terms and definitions that are approved through the NERC reliability standards development process.

### **303. Relationship between Reliability Standards and Competition**

To ensure reliability standards are developed with due consideration of impacts on competition, to ensure standards are not unduly discriminatory or preferential, and recognizing that reliability is an essential requirement of a robust North American economy, each reliability standard shall meet all of these market-related objectives:

1. **Competition** — A reliability standard shall not give any market participant an unfair competitive advantage.
2. **Market Structures** — A reliability standard shall neither mandate nor prohibit any specific market structure.
3. **Market Solutions** — A reliability standard shall not preclude market solutions to achieving compliance with that standard.
4. **Commercially Sensitive Information** — A reliability standard shall not require the public disclosure of commercially sensitive information or other confidential information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.
5. **Adequacy** — NERC shall not set standards defining an adequate amount of, or requiring expansion of, bulk power system resources or delivery capability.

### **304. Essential Principles for the Development of Reliability Standards**

NERC shall develop reliability standards in accordance with the NERC *Reliability Standards Development Procedure*, which is incorporated into these rules as **Appendix 3A**. Appeals in connection with the development of a reliability standard shall also be conducted in accordance with the NERC *Reliability Standards Development Procedure*. Any amendments or revisions to the *Reliability Standards Development Procedure* shall be consistent with the following essential principles:

1. **Openness** — Participation shall be open to all persons who are directly and materially affected by the reliability of the North American bulk power system. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in NERC or any other organization, and shall

not be unreasonably restricted on the basis of technical qualifications or other such requirements.

2. **Transparency** — The process shall be transparent to the public.
3. **Consensus-building** — The process shall build and document consensus for each standard, both with regard to the need and justification for the standard and the content of the standard.
4. **Fair Balance of Interests** — The process shall fairly balance interests of all stakeholders and shall not be dominated by any single interest category.
5. **Due Process** — Development of standards shall provide reasonable notice and opportunity for any person with a direct and material interest to express views on a proposed standard and the basis for those views, and to have that position considered in the development of the standards.
6. **Timeliness** — Development of standards shall be timely and responsive to new and changing priorities for reliability of the bulk power system.

### **305. Registered Ballot Body**

NERC reliability standards shall be approved by a registered ballot body prior to submittal to the board and then to ERO governmental authorities for their approval, where authorized by applicable legislation or agreement. This Section 305 sets forth the rules pertaining to the composition of, and eligibility to participate in, the registered ballot body.

1. **Eligibility to Vote on Standards** — Any person or entity may join the registered ballot body to vote on standards, whether or not such person or entity is a member of NERC.
2. **Inclusive Participation** — The segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the reliability of the bulk power system that can meet any one of the eligibility criteria for a segment is entitled to belong to and vote in each segment for which it qualifies, subject to limitations defined in Sections 305.3 and 305.5.
3. **General Criteria for Registered Ballot Body Membership** — The general criteria for membership in the segments are:
  - 3.1 **Multiple Segments** — A corporation or other organization with integrated operations or with affiliates that qualifies to belong to more than one segment (e.g., transmission owners and load serving entities) may join once in each segment for which it qualifies, provided that each segment constitutes a separate membership and the organization is represented in each segment by a different representative. Affiliated entities are collectively limited to one membership in each segment for which they are qualified.

- 3.2 **Withdrawing from a Segment or Changing Segments** — After its initial registration in a segment, each registered participant may elect to withdraw from a segment or apply to change segments at any time.
- 3.3 **Review of Segment Criteria** — The board shall review the qualification guidelines and rules for joining segments at least every three years to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
4. **Proxies for Voting on Standards** — Any registered participant may designate an agent or proxy to vote on its behalf. There are no limits on how many proxies an agent may hold. However, for the proxy to be valid, NERC must have in its possession written documentation signed by the representative of the registered participant that the voting right by proxy has been transferred from the registered participant to the agent.
5. **Stakeholder Segments** — The specific criteria for membership in each registered ballot body segment are defined in the *Reliability Standards Development Procedure* in **Appendix 3A**.
6. **Review of Stakeholder Segment Entries**  
NERC shall review all applications for joining the registered ballot body, and shall make a determination of whether the applicant's self-selection of a segment satisfies at least one of the guidelines to belong to that segment. The entity shall then become eligible to participate as a voting member of that segment. The Standards Committee shall resolve disputes regarding eligibility for membership in a segment, with the applicant having the right of appeal to the board.

### **306. Standards Committee**

The Standards Committee shall provide oversight of the reliability standards development process to ensure stakeholder interests are fairly represented. The Standards Committee shall not under any circumstance change the substance of a draft or approved standard.

1. **Membership** — The Standards Committee is a representative committee comprising representatives of two members of each of the segments in the registered ballot body.
2. **Elections** — Standards Committee members are elected for staggered (one per segment per year) two-year terms by the respective stakeholder segments in accordance with the *Procedure for the Election of Members of the NERC Standards Committee*, which is incorporated into these rules as **Appendix 2**. Segments may use their own election procedure if such a procedure is ratified by two-thirds of the members of a segment and approved by the board.
3. **Canadian Representation**
  - 3.1 **Provision for Sufficient Canadian Representation** — If any regular election of Standards Committee members does not result in at least two



Canadian members on the Standards Committee, the Canadian nominees who were not elected but who received the next highest percentage of votes within their respective segment(s) will be designated as additional members of the Standards Committee, as needed to achieve a total of two Canadian members.

- 3.2 **Terms of Specially Designated Canadian Members** — Each specially designated Canadian member of the Standards Committee shall have a term ending with the next annual election.
  - 3.3 **Segment Preference** — If any segment has an unfilled representative position on the Standards Committee following the annual election, the first preference is to assign each specially designated Canadian representative to a segment with an unfilled representative position for which his or her organization qualifies.
  - 3.4 **Rights of Specially Designated Canadian Members** — Any specially designated Canadian members of the Standards Committee shall have the same rights and obligations as all other members of the Standards Committee.
4. **Open Meetings** — All meetings of the Standards Committee shall be open and publicly noticed on the NERC Web site.

### **307. Standards Process Manager**

NERC shall assign a standards process manager to administer the development of reliability standards. The standards process manager shall be responsible for ensuring that the development and revision of standards are in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall work to achieve the highest degree of integrity and consistency of quality and completeness of the reliability standards. The standards process manager shall coordinate with any regional entities that develop regional reliability standards to ensure those standards are effectively integrated with the NERC reliability standards.

### **308. Steps in the Development of Reliability Standards**

1. **Procedure** — NERC shall develop reliability standards through the process set forth in the NERC *Reliability Standards Development Procedure (Appendix 3A)*. The procedure includes a provision for approval of urgent action standards that can be completed within 60 days and emergency actions that may be further expedited.
2. **Board Approval** — Reliability standards or revisions to reliability standards approved by the ballot pool in accordance with the *Reliability Standards Development Procedure* shall be submitted for approval by the board. No reliability standard or revision to a reliability standard shall be effective unless approved by the board.

3. **Governmental Approval** — After receiving board approval, a reliability standard or revision to a reliability standard shall be submitted to all applicable ERO governmental authorities in accordance with Section 309. No reliability standard or revision to a reliability standard shall be effective within a geographic area over which an ERO governmental authority has jurisdiction unless approved by such ERO governmental authority or is otherwise made effective pursuant to the laws applicable to such ERO governmental authority.

**309. Filing of Reliability Standards for Approval by ERO Governmental Authorities**

1. **Filing of Reliability Standards for Approval** — Where authorized by applicable legislation or agreement, NERC shall file with the applicable ERO governmental authorities each reliability standard, modification to a reliability standard, or withdrawal of a standard that is approved by the board. Each filing shall be in the format required by the ERO governmental authority and shall include: a concise statement of the basis and purpose of the standard; the text of the standard; the implementation plan for the reliability standard; a demonstration that the standard meets the essential attributes of reliability standards as stated in Section 302; the drafting team roster; the ballot pool and final ballot results; and a discussion of public comments received during the development of the reliability standard and the consideration of those comments.
2. **Remanded Reliability Standards and Directives to Develop Standards** — If an ERO governmental authority remands a reliability standard to NERC or directs NERC to develop a reliability standard, NERC shall within five (5) business days notify all other applicable ERO governmental authorities, and shall within thirty (30) calendar days report to all ERO governmental authorities a plan and timetable for modification or development of the reliability standard. Standards that are remanded or directed by an ERO governmental authority shall be modified or developed using the *Reliability Standards Development Procedure*. NERC shall, during the development of a modification for the remanded standard or directed standard, consult with other ERO governmental authorities to coordinate any impacts of the proposed standards in those other jurisdictions. The urgent approval action procedure may be applied if necessary to meet a timetable for action required by the ERO governmental authorities, respecting to the extent possible the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interest in developing reliability standards.
3. **Directives to Develop Standards under Extraordinary Circumstances** — An ERO governmental authority may, on its own initiative, determine that extraordinary circumstances exist requiring expedited development of a reliability standard. In such a case, the applicable agency may direct the development of a standard within a certain deadline. NERC staff shall prepare the standards authorization request and seek a stakeholder sponsor for the request. If NERC is unable to find a sponsor for the proposed standard, NERC will be designated as the requestor. The proposed standard will then proceed through the standards development process, using the urgent and emergency action procedures

described in the *Reliability Standards Development Procedure* as necessary to meet the specified deadline. The timeline will be developed to respect, to the extent possible, the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing reliability standards.

- 3.1 Consistent with all reliability standards developed under the urgent or emergency action process, each of the three possible follow-up actions as documented in the *Reliability Standards Development Procedure* are to be completed through the standards development process and are subject to approval by the ERO governmental authorities in the U.S. and Canada.

### **310. Reliability Standards Annual Work Plan**

NERC shall develop and provide an annual work plan for development of reliability standards to the applicable ERO governmental authorities. NERC shall consider the comments and priorities of the ERO governmental authorities in developing and updating the work plan. Each annual work plan shall include a progress report comparing results achieved to the prior year's plan.

### **311. Regional Entity Standards Development Procedures**

1. **NERC Approval of Regional Entity Reliability Standards Development Procedure** — To enable a regional entity to develop regional reliability standards that are to be recognized and made part of NERC reliability standards, a regional entity may request NERC to approve a regional entity reliability standards development procedure.
2. **Public Notice and Comment on Regional Reliability Standards Development Procedure** — Upon receipt of such a request, NERC shall publicly notice and request comment on the proposed regional standards development procedure, allowing a minimum of 45 days for comment. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to withdraw the request, revise the procedure and request another posting for comment, or submit the procedure, along with its consideration of any objections received, for approval by NERC.
3. **Evaluation of Regional Reliability Standards Development Procedure** — NERC shall evaluate whether a regional reliability standards development procedure meets the criteria listed below and shall consider stakeholder comments, any unresolved stakeholder objections, and the consideration of comments provided by the regional entity, in making that determination. If NERC determines the regional reliability standards development procedure meets these requirements, the procedure shall be submitted to the board for approval. The board shall consider the recommended action, stakeholder comments, any unresolved stakeholder comments, and the regional entity consideration of comments in determining whether to approve the regional reliability standards development procedure.

- 3.1 **Evaluation Criteria** — The regional reliability standards development procedure shall be:
- 3.1.1 **Open** — The regional reliability standards development procedure shall provide that any person or entity who is directly and materially affected by the reliability of the bulk power systems within the regional entity shall be able to participate in the development and approval of reliability standards. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in the regional entity, a regional entity or any organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.
  - 3.1.2 **Inclusive** — The regional reliability standards development procedure shall provide that any person with a direct and material interest has a right to participate by expressing an opinion and its basis, having that position considered, and appealing through an established appeals process if adversely affected.
  - 3.1.3 **Balanced** — The regional reliability standards development procedure shall have a balance of interests and shall not permit any two interest categories to control the vote on a matter or any single interest category to defeat a matter.
  - 3.1.4 **Due Process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.
  - 3.1.5 **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.
  - 3.1.6 **Accreditation of Regional Standards Development Procedure** — A regional entity's reliability standards development procedure that is accredited by the American National Standards Institute or the Standards Council of Canada shall be deemed to meet the criteria listed in this Section 311.3.1, although such accreditation is not a prerequisite for approval by NERC.
  - 3.1.7 **Use of NERC Procedure** — A regional entity may adopt the *NERC Reliability Standards Development Procedure* as the regional reliability standards development procedure, in which

case the regional entity's procedure shall be deemed to meet the criteria listed in this Section 311.3.1.

4. **Revisions of Regional Reliability Standards Development Procedures** — Any revision to a regional reliability standards development procedure shall be subject to the same approval requirements set forth in Sections 311.1 through 311.3.
5. **Duration of Regional Reliability Standards Development Procedures** — The regional reliability standards development procedure shall remain in effect until such time as it is replaced with a new version approved by NERC or it is withdrawn by the regional entity. The regional entity may, at its discretion, withdraw its regional reliability standards development procedure at any time.

### **312. Regional Reliability Standards**

1. **Basis for Regional Reliability Standards** — Regional entities may propose regional reliability standards that set more stringent reliability requirements than the NERC reliability standard or cover matters not covered by an existing NERC reliability standard. Such regional reliability standards shall in all cases be approved by NERC and made part of the NERC reliability standards and shall be enforceable in accordance with the delegation agreement between NERC and the regional entity or other instrument granting authority over enforcement to the regional entity. No entities other than NERC and the regional entity shall be permitted to develop regional reliability standards that are enforceable under statutory authority delegated to NERC and the regional entity.
2. **Regional Reliability Standards That are Directed by a NERC Reliability Standard** — Although it is the intent of NERC to promote uniform reliability standards across North America, in some cases it may not be feasible to achieve a reliability objective with a reliability standard that is uniformly applicable across North America. In such cases, NERC may direct regional entities to develop regional reliability standards necessary to implement a NERC reliability standard. Such regional reliability standards that are developed pursuant to a direction by NERC shall be made part of the NERC reliability standards.
3. **Procedure for Developing an Interconnection-wide Regional Standard** — A regional entity organized on an interconnection-wide basis may propose a regional reliability standard for approval as a NERC reliability standard to be made mandatory for all applicable bulk power system owners, operators, and users within that interconnection.
  - 3.1 **Presumption of Validity** — An interconnection-wide regional reliability standard that is determined by NERC to be just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities, shall be adopted as a NERC reliability standard. NERC shall rebuttably presume that a regional reliability standard developed, in accordance with a regional reliability standards development process approved by NERC, by a regional entity organized on an interconnection-

wide basis, is just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities.

- 3.2 **Notice and Comment Procedure for Interconnection-wide Regional Reliability Standard** — NERC shall publicly notice and request comment on the proposed interconnection-wide regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity's reliability standards development process. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to comment on or withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.
- 3.3 **Approval of Interconnection-wide Regional Reliability Standard by NERC** — NERC shall evaluate and recommend whether a proposed interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections that could serve as a basis for rebutting the presumption of validity of the regional reliability standard. The regional entity, having been notified of the results of the evaluation and recommendation concerning NERC proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity's request, NERC's recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity's consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.
- 3.4 **ERO Governmental Authority Approval** — An interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.
- 3.5 **Enforcement of Interconnection-wide Regional Reliability Standard** — An interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.

4. **Procedure for Developing Non-Interconnection-Wide Regional Reliability Standards**

Regional entities that are not organized on an interconnection-wide basis may propose regional reliability standards to apply within their respective regions. Such standards may be developed through the NERC reliability standards development procedure, or alternatively, through a regional reliability standards development procedure that has been approved by NERC.

4.1 **No Presumption of Validity** — Regional reliability standards that are not proposed to be applied on an interconnection-wide basis are not presumed to be valid but may be demonstrated by the proponent to be valid.

4.2 **Notice and Comment Procedure for Non-Interconnection-wide Regional Reliability Standards** — NERC shall publicly notice and request comment on the proposed regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity's reliability standards development process. The regional entity shall have an opportunity to comment on or resolve any objections identified in the comments and may choose to withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.

4.3 **NERC Approval of Non-Interconnection-wide Regional Reliability Standards** — NERC shall evaluate and recommend whether a proposed non-Interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections. The regional entity, having been notified of the results of the evaluation and recommendation concerning proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity's request, the recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity's consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.

4.4 **NERC Governmental Authority Approval** — A non-Interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.

- 4.5 **Enforcement of Non-Interconnection-wide Regional Reliability Standards** — A non-Interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.

5. **Appeals**

A Regional Entity shall have the right to appeal NERC's decision not to approve a proposed regional reliability standard or variance to the Commission or other applicable governmental authority.

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

1. **Regional Criteria** — Regional entities may develop regional criteria that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Regional criteria may also address issues not within the scope of reliability standards, such as resource adequacy. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents used to enhance the reliability of the regional bulk power system. These documents typically provide benefits by promoting more consistent implementation of the NERC reliability standards within the region. These documents are not NERC reliability standards, regional reliability standards, or regional variances, and therefore are not enforceable under authority delegated by NERC pursuant to delegation agreements and do not require NERC approval.
2. **Catalog of Regional Reliability Criteria** — NERC shall maintain a current catalog of regional reliability criteria. Regional entities shall provide a catalog listing of regional reliability criteria to NERC and shall notify NERC of changes to the listing. Regional entities shall provide any listed document to NERC upon written request.

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

**Notice of Potential Conflict** — If a bulk power system owner, operator, or user determines that a NERC or regional reliability standard may conflict with a function, rule, order, tariff, rate schedule, legislative requirement or agreement that has been accepted, approved, or ordered by a governmental authority affecting that entity, the entity shall expeditiously notify the governmental authority, NERC, and the relevant regional entity of the conflict.

1. **Determination of Conflict** — NERC, upon request of the governmental authority, may advise the governmental authority regarding the conflict and propose a resolution of the conflict, including revision of the reliability standard if appropriate.
2. **Regulatory Precedence** — Unless otherwise ordered by a governmental authority, the affected bulk power system owner, operator, or user shall continue



to follow the function, rule, order, tariff, rate schedule, legislative requirement, or agreement accepted, approved, or ordered by the governmental authority until the governmental authority finds that a conflict exists and orders a remedy and such remedy is affected.

**315. Revisions to NERC Reliability Standards Development Procedure**

Any person or entity may submit a written request to modify NERC *Reliability Standards Development Procedure*. Consideration of the request and development of the revision shall follow the process defined in the NERC *Reliability Standards Development Procedure*. Upon approval by the board, the revision shall be submitted to the ERO governmental authorities for approval. Changes shall become effective only upon approval by the ERO governmental authorities or on a date designated by the ERO governmental authorities or as otherwise applicable in a particular jurisdiction.

**316. Accreditation**

NERC shall seek continuing accreditation of the NERC reliability standards development process by the American National Standards Institute and the Standards Council of Canada.

**317. Five-Year Review of Standards**

NERC shall complete a review of each NERC reliability standard at least once every five years from the effective date of the standard or the latest revision to the standard, whichever is later. The review process shall be conducted in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall be responsible for administration of the five-year review of reliability standards. As a result of this review, the NERC reliability standard shall be reaffirmed, revised, or withdrawn. If the review indicates a need to revise or withdraw the standard, a request for revision or withdrawal shall be prepared, submitted and addressed in accordance with the NERC *Reliability Standards Development Procedure*.

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

NERC shall, through a memorandum of understanding, maintain a close working relationship with the North American Energy Standards Board and ISO/RTO Council to ensure effective coordination of wholesale electric business practice standards and market protocols with the NERC reliability standards.

**319. Archived Standards Information**

NERC shall maintain a historical record of reliability standards information that is no longer maintained on-line. For example, standards that expired or were replaced may be removed from the on-line system. Archived information shall be retained indefinitely as practical, but in no case less than five years or one complete standards review cycle from the date on which the standard was no longer in effect. Archived records of reliability standards information shall be available electronically within 30 days following the receipt by the standards process manager of a written request.

**320. Alternate Method for Adopting Violation Risk Factors**

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard using the procedures set out in Section 1400 of these Rules of Procedure.

## **SECTION 400 — COMPLIANCE ENFORCEMENT**

### **401. Scope of the NERC Compliance Enforcement Program**

1. **Components of the NERC Compliance Enforcement Program** — NERC shall develop and implement a NERC Compliance Monitoring and Enforcement Program to promote the reliability of the bulk power system by enforcing compliance with approved reliability standards in those regions of North American in which NERC and/or a regional entity (pursuant to a delegation agreement with NERC that has been approved by the applicable ERO governmental authority) has been given enforcement authority. There are four distinct parts of the NERC Monitoring and Compliance Enforcement Program: (1) NERC's oversight of the regional entity compliance programs (Section 402), (2) the definition of the required regional entity compliance enforcement program attributes (Section 403), (3) NERC's monitoring of regional entity compliance with reliability standards (Section 404), and (4) the monitoring of compliance with reliability standards that are applicable to NERC (Sections 405–406).
2. **Who Must Comply** — Where required by applicable legislation, regulation, rule or agreement, all bulk power system owners, operators, and users, regional entities, and NERC, are required to comply with all approved NERC reliability standards at all times. Regional reliability standards and regional variances approved by NERC and the applicable ERO governmental authority shall be considered NERC reliability standards and shall apply to all bulk power system owners, operators, or users responsible for meeting those standards within the regional entity boundaries, whether or not the bulk power system owner, operator, or user is a member of the regional entity.
3. **Data Access** — All bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to monitor compliance with the reliability standards. NERC and the applicable regional entity will define the data retention and reporting requirements in the reliability standards and compliance reporting procedures.
4. **Role of Regional Entities in the Compliance Enforcement Program** — Each regional entity that has been delegated authority through a delegation agreement or other legal instrument approved by the applicable ERO governmental authority shall, in accordance with the terms of the approved delegation agreement, administer a regional entity compliance enforcement program to meet the NERC Compliance Monitoring and Enforcement Program goals and the requirements in this Section 400.
5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a regional entity in the event that NERC does not have a delegation agreement, or the regional entity withdraws from the agreement or does not operate its compliance enforcement program in accordance with the delegation agreement or other applicable requirements.

- 5.1 Should NERC not have a delegation agreement with a regional entity covering a geographic area, or a regional entity withdraws from an existing delegation agreement or the delegation agreement is otherwise terminated, NERC will directly administer the Compliance Monitoring and Enforcement Program applicable to owners, operators and users of the bulk-power system within that geographic area.
  1. This monitoring and enforcement will be accomplished by NERC and compliance staff from another approved regional entity.
  2. If an existing delegation agreement with a regional entity is terminating, the regional entity shall promptly provide to NERC all relevant compliance information regarding registered entities, contacts, prior compliance information and actions, mitigation plans, and remedial actions for the period in which the regional entity was responsible for administering the Compliance Monitoring and Enforcement Program.
  3. NERC will levy and collect all penalties directly and will utilize any penalty monies collected to offset the expenses of administering the compliance monitoring and enforcement program for the geographic area.
- 5.2 Should a regional entity seek to withdraw from its delegation agreement, NERC will seek agreement from another regional entity to amend its delegation agreement with NERC to extend that regional entity's boundaries for compliance monitoring and enforcement. In the event no regional entity is willing to accept this responsibility, NERC will administer the Compliance Monitoring and Enforcement Program within the geographical boundaries of the regional entity seeking to withdraw from the delegation agreement, in accordance with Section 401.5.1.
6. **Actively Monitored Requirements** — NERC, with input from the regional entities, stakeholders, and regulators, shall annually select a subset of the NERC reliability standards and requirements to be actively monitored and audited in the NERC annual compliance program. Compliance is required with all NERC reliability standards whether or not they are included in the subset of reliability standards and requirements designated to be actively monitored and audited in the NERC annual compliance program.
7. **Penalties, Sanctions, and Remedial Actions** — NERC and regional entities will apply penalties, sanctions, and remedial actions that bear a reasonable relation to the seriousness of a violation and take into consideration timely remedial efforts as defined in the NERC *Sanction Guidelines*, which is incorporated into these rules as **Appendix 4B**.
8. **Multiple Enforcement Actions** – A registered entity shall not be subject to an enforcement action by NERC and a regional entity for the same violation.
9. **Records** — NERC shall maintain a record of each compliance submission, including self-reported, confirmed, and alleged violations of approved reliability

standards; associated penalties, sanctions, remedial actions and settlements; and the status of mitigation actions.

**402. NERC Oversight of the Regional Entity Compliance Enforcement Programs**

1. **NERC Monitoring Program** — NERC shall have a program to monitor the compliance enforcement program of each regional entity that has been delegated authority. The objective of this monitoring program shall be to ensure that the regional entity carries out its compliance enforcement program in accordance with these rules and the terms of the delegation agreement, and to ensure consistency and fairness of the regional entity's compliance enforcement program. Oversight and monitoring by NERC shall be accomplished through an annual compliance enforcement program review, program audits, and regular evaluations of regional entity compliance enforcement program performance as described below.
  - 1.1 **NERC Review of Regional Compliance Enforcement Program Annual Plans** — NERC shall require each regional entity to submit for review and approval an annual compliance enforcement program implementation plan. NERC shall review each regional entity's compliance enforcement program annual implementation plan and shall accept the plan if it meets NERC requirements and the requirements of the delegation agreement.
  - 1.2 **Regional Entity Program Evaluation** — NERC shall annually evaluate the goals, tools, and procedures of each regional entity compliance enforcement program to determine the effectiveness of each regional entity program, using criteria developed by the NERC Compliance and Certification Committee.
  - 1.3 **Regional Entity Program Audit** — At least once every three years, NERC shall conduct an audit to evaluate how each regional entity compliance enforcement program implements the NERC Compliance Monitoring and Enforcement Program. The evaluation shall be based on these rules of procedures, the delegation agreement, approved regional entity annual compliance enforcement program annual implementation plans, required program attributes, and the NERC compliance program procedures. These evaluations shall be provided to the appropriate ERO governmental authorities to demonstrate the effectiveness of each regional entity.
    - 1.3.1 NERC shall maintain an audit procedure containing the requirements, steps, and timelines to conduct an audit of each regional entity compliance enforcement program. The current procedure is contained in the NERC Audit of Regional Entity Compliance Programs, which is incorporated into these rules as **Appendix 4A**.
    - 1.3.2 NERC shall establish a program to audit bulk power system owners, operators, and users operating within a regional entity to verify the findings of previous compliance audits conducted by the regional entity to evaluate how well the regional entity compliance

enforcement program is meeting its delegated authority and responsibilities.

- 1.4 ERO governmental authorities will be allowed to participate as an observer in any audit conducted by NERC of a regional entity's compliance monitoring and enforcement program. A representative of the regional entity being audited will be allowed to participate in the audit as an observer.
2. **Consistency Among Regional Compliance Enforcement Programs** — To provide for a consistent compliance enforcement program for all bulk power system owners, operators, and users required to comply with approved reliability standards, NERC shall maintain a single, uniform compliance monitoring and enforcement program. Differences in regional entity program methods, including determination of violations and penalty assessment, shall be justified on a case-by-case basis and fully documented in each regional entity delegation agreement.
  - 2.1 NERC shall ensure that each of the regional entity compliance enforcement programs meets these Rules of Procedure and follows the terms of the delegation agreement and the approved regional entity compliance enforcement program annual plan.
  - 2.2 NERC shall develop a single, uniform compliance monitoring and enforcement program containing the procedures to ensure the consistency and fairness of the processes used to determine regional entity compliance enforcement program findings of compliance and noncompliance, and the application of penalties and sanctions.
  - 2.3 NERC shall periodically conduct regional entity compliance manager forums. These forums shall use the results of regional entity compliance program audits and findings of NERC compliance staff to identify and refine regional entity compliance program differences into a set of best practices over time.
3. **Information Collection and Reporting** — NERC and the regional entities shall implement data management procedures that address data reporting requirements, data integrity, data retention, data security, and data confidentiality.
4. **Violation Disclosure** — NERC shall disclose all confirmed violations and maintain as confidential alleged violations, according to the reporting and disclosure process in Section 408.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — NERC and regional entity compliance staff shall have the authority and responsibility to make initial determinations of compliance or noncompliance, and where authorized by the appropriate governmental authorities or where otherwise authorized, to determine penalties and sanctions for noncompliance with a reliability standard, and issue remedial

action directives. Regional entity boards or a compliance panel reporting directly to the regional entity board will be vested with the authority for the overall regional entity compliance program and have the authority to impose penalties and sanctions on behalf of NERC, where authorized by applicable legislation or agreement. Remedial action directives may be issued by NERC or a regional entity that is aware of a bulk power system owner, operator, or user that is about to engage in an act or practice that would result in noncompliance. If, after receiving such a directive, the bulk power system owner, operator, or user does not take appropriate action to avert a violation of a reliability standard, NERC may petition the applicable ERO governmental authority to issue a compliance order.

6. **Due Process** — NERC shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The appeals process is set forth in Sections 409–411. The process shall allow bulk power system owners, operators, and users to appeal the regional entity’s findings of noncompliance and to appeal penalties, sanctions, and remedial actions that are levied by the regional entity. Appeals beyond the NERC process will be heard by the applicable governmental authority.

The appeals process will also allow for appeals to NERC of any findings of noncompliance issued by NERC to a regional entity for standards and requirements where the regional entity is monitored for compliance to a reliability standard. No monetary penalties will be levied in these matters; however sanctions, remedial actions, and directives to comply may be applied by NERC.

7. **Conflict Disclosure** — NERC shall disclose to the appropriate governmental authorities any potential conflicts between a market rule and the enforcement of a regional reliability standard.
8. **Confidentiality** — To maintain the integrity of the NERC Compliance Monitoring and Enforcement Program, NERC and regional entity staff, audit team members, and committee members shall maintain the confidentiality of information shared during investigations, audits, drafting of reports, appeals, and closed meetings.
  - 8.1 NERC and the regional entity shall have in place appropriate codes of conduct and confidentiality agreements for staff and other compliance enforcement program participants.
  - 8.2 Individuals not bound by NERC or regional entity codes of conduct who serve on compliance-related committees or audit teams shall sign a NERC confidentiality agreement prior to participating on the committee or team.
  - 8.3 Information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall

not be distributed outside of a committee or team, nor released publicly. Other information subject to confidentiality is identified in Section 1500.

8.4 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to appropriate action by the regional entity or NERC, including prohibiting participation in future compliance enforcement activities.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to all people who participate in NERC and regional entity compliance enforcement audits. Training for NERC and regional entity personnel and others who serve as compliance audit team leaders shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.

#### **403. Required Attributes of Regional Entity Compliance Enforcement Programs**

Each regional entity compliance enforcement program shall promote excellence in the enforcement of reliability standards. To accomplish this goal, each regional entity compliance enforcement program shall at a minimum meet all of the following attributes.

##### **Program Structure**

1. **Independence** — Each regional entity's governance of its compliance enforcement program shall exhibit independence, meaning the compliance enforcement program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the regional entity. The program shall not be unduly influenced by the bulk power system owners, operators, and users being monitored or other regional entity activities that are required to meet the reliability standards. Regional entities must include rules providing that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
2. **Exercising Authority** — Each regional entity compliance enforcement program shall exercise the responsibility and authority in carrying out the delegated functions of the NERC Compliance Monitoring and Enforcement Program in accordance with delegation agreements. These functions include but are not limited to: data gathering, data reporting, compliance violation investigations, compliance auditing activities, evaluating compliance and noncompliance, imposing penalties and sanctions, and approving and tracking mitigation actions.
3. **Delegation of Authority** — To maintain independence, fairness, and consistency in the NERC Compliance Monitoring and Enforcement Program, a regional entity shall not sub-delegate its compliance enforcement program duties to entities or persons other than the regional entity compliance enforcement program staff, unless required by statute or regulation in the applicable jurisdiction.



4. **Hearings of Contested Findings or Sanctions** — The regional entity board or compliance panel reporting directly to the regional entity board (with appropriate recusal procedures) will be vested with the authority for conducting compliance hearings in which any bulk power system owner, operator, or user provided notice of an alleged violation may present facts and other information to contest a notice of alleged violation or any proposed penalty, sanction, or remedial action. Compliance hearings shall be conducted in accordance with the Hearing Process set forth in Attachment 2 to the NERC Compliance Monitoring and Enforcement Program document. If a stakeholder body serves as the hearing body, no two industry sectors may control any decision and no single segment may veto any matter related to compliance after recusals.

#### **Program Resources**

5. **Regional Entity Compliance Staff** — Each regional entity shall have sufficient resources to meet delegated compliance enforcement responsibilities, including the necessary professional staff to manage and implement the regional entity compliance enforcement program.
6. **Regional Entity Compliance Staff Independence** — The regional entity compliance enforcement program staff shall be capable of and required to make all initial determinations of compliance and noncompliance and determine penalties, sanctions, and remedial actions.
  - 6.1 Regional entity compliance enforcement program staff shall not have a conflict of interest, real or perceived, in the outcome of compliance violation investigations, compliance audits, reports, or sanctions. The regional entity shall have in effect a conflict of interest policy.
  - 6.2 Regional entity compliance enforcement program staff shall have the authority and responsibility to investigate, audit (with the input of industry experts or regional members), make initial determinations of compliance or noncompliance, and levy penalties and sanctions without interference or undue influence from regional entity members and their representative or other industry entities.
  - 6.3 Regional entity compliance enforcement program staff may call upon independent technical experts who have no conflict of interest in the outcome of the compliance violation investigation or compliance audit to provide technical advice or recommendations in the determination of compliance or noncompliance in compliance audits, compliance violation investigations, or review of self-reported violations.
  - 6.4 Regional entity compliance enforcement program staff shall abide by the confidentiality requirements contained in Section 1500 of these Rules of Procedure, the NERC delegation agreement and other confidentiality agreements required by the NERC Compliance Monitoring and Enforcement Program.
  - 6.5 Contracting with independent consultants or others working for the regional entity compliance enforcement program shall be permitted

provided the individual has not received compensation from a bulk power system owner, operator, or user being monitored for a period of at least the preceding six months and owns no financial interest in any bulk power system owner, operator, or user being monitored for compliance to the reliability standard, regardless of where the bulk power system owner, operator, or user operates. Any such individuals for the purpose of these rules shall be considered as augmenting regional entity compliance staff.

- 7. Use of Industry Experts and Regional Entity Members** — Industry experts and regional entity members may be called upon to provide their technical expertise in compliance violation investigations, compliance audits, and other compliance activities.
- 7.1 The regional entity shall have procedures defining the allowable involvement of industry experts and regional entity members. The procedures shall address applicable antitrust laws and conflicts of interest.
- 7.2 Industry experts and regional entity members shall have no conflict of interest or financial interests in the outcome of their activities.
- 7.3 Regional entity members and volunteers, as part of teams or regional entity committees, may provide input to the regional entity compliance staff so long as the authority and responsibility for (i) initially evaluating compliance or noncompliance and (ii) levying penalties, sanctions, or remedial actions shall not be delegated to any person or entity other than the compliance staff of the regional entity. Industry experts, regional entity members, or regional entity committees shall not make initial determinations of noncompliance or levy penalties, sanctions, or remedial actions. Any committee involved shall be organized so that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
- 7.4 Industry experts and regional entity members shall sign a confidentiality agreement appropriate for the activity being performed.
- 7.5 All industry experts and regional entity members participating in compliance audits and compliance violation investigations shall successfully complete auditor training provided by NERC or the regional entity prior to performing these activities

**Program Design**

8. **Regional Entity Compliance Enforcement Program Content** — All approved reliability standards shall be included in the regional entity compliance enforcement program for all bulk power system owners, operators, and users within the defined boundaries of the regional entity. Compliance to approved regional entity reliability standards is applicable only within the footprint of the regional entity that submitted those particular regional entity reliability standards for approval. NERC will identify the minimum set of reliability standards and requirements to be actively monitored by the regional entity in a given year.
9. **Antitrust Provisions** — Each regional entity's compliance enforcement program shall be structured and administered to abide by U.S. antitrust law and Canadian competition law.
10. **Information Submittal** — All bulk power system owners, operators, and users within the regional entity responsible for complying with reliability standards shall submit timely and accurate information when requested by the regional entity or NERC, in accordance with established procedures of NERC and the regional entity. NERC and the regional entities shall preserve any mark of confidentiality on information submitted pursuant to Section 1502.1.
  - 10.1 Each regional entity has the authority to collect the necessary information to determine compliance and shall develop processes for gathering data from the bulk power system owners, operators, and users they monitor.
  - 10.2 When requested, the regional entities shall report information to NERC promptly and in accordance with NERC procedures.
  - 10.3 Regional entities shall notify NERC of all violations of NERC reliability standards by entities over which the regional entity has enforcement authority or enforcement responsibilities, whether self-reported, alleged, or confirmed, in accordance with the *Reporting and Disclosure Process* in Section 408.
  - 10.4 A bulk power system owner, operator, or user found in noncompliance with a reliability standard shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The regional entity compliance staff shall review and approve the mitigation plan in accordance with section 403.18. Regional entity compliance staff may issue remedial action directives to owners, operators and users of the bulk-power system to comply with reliability standards, as needed to preserve the reliability of the bulk power system.
  - 10.5 An officer of a bulk power system owner, operator, or user shall certify as accurate all compliance data self-reported to the regional entity compliance enforcement program.

- 10.6 Regional entities shall develop and implement procedures to spot-check and verify the compliance information submitted by bulk power system owners, operators, and users.
11. **Compliance Audits of Bulk Power System Owners, Operators, and Users** — Each regional entity will maintain a program of proactive compliance audits. The regional entity shall audit each bulk power system owner, operator, or user responsible for complying with reliability standards. A compliance audit is a process in which a detailed review of the activities of a bulk power system owner, operator, or user is performed to determine if that bulk power system owner, operator, or user is complying with approved reliability standards.
- 11.1 For those bulk power system owners and operators with primary reliability responsibility (i.e., entities requiring organizational certification), the compliance audit will be performed at least once every three years. For other bulk power system owners, operators, and users on the NERC Compliance Registry, compliance audits shall be performed on a schedule established by NERC.
- 11.2 Audits of bulk power system owners and operators with primary reliability responsibility will be performed on the audited entity's site. For other bulk power system owners, operators, and users on the NERC Compliance Registry, the audit may be either an on-site audit or based on review of documents, as determined to be necessary and appropriate by NERC or regional entity compliance program, staff.
- 11.3 Compliance audits must include a detailed review of the activities of the bulk power system owner, operator, or user to determine if the bulk power system owner, operator, or user is complying with all approved reliability standards identified for audit by NERC. The compliance audit shall include a review of supporting documentation and evidence used by the bulk power system owner, operator or user for self-certification compliance reporting for an appropriate reporting period since the last compliance audit.
- 11.4 NERC compliance staff may participate on any regional entity audit team, at any time at NERC's discretion. Additionally, any applicable ERO governmental authority may participate on an audit team as an observer in any regional entity audit within its jurisdiction, at the ERO governmental authority's discretion.
12. **Compliance Audit Results** — The regional entity shall make an evaluation of a bulk power system owner's, operator's, or user's compliance based on the information obtained from a compliance audit and previously reported compliance information. After due process is complete, this evaluation (excluding any critical energy infrastructure information or other confidential

information) shall be made public. The regional entity shall send the report to NERC for public posting.

13. **Compliance Violation Investigations** — Compliance violation investigations are necessary to determine if a violation of reliability standards has occurred when certain system events occur, or when other owners, operators, or users of the bulk power system file complaints. NERC is ultimately responsible for how a regional entity conducts compliance violation investigations. Compliance violation investigations are initiated at the discretion of the regional entity compliance enforcement program staff, the senior executive officer of the regional entity, NERC compliance staff, or the NERC president. The regional entity shall respond to any complaints filed by one entity against another that allege a violation of reliability standards by a bulk power system owner, operator, or user. The regional entity may ask NERC to assist with the compliance violation investigation. Situations that can trigger a compliance violation investigation include but are not limited to (i) significant problems arising on the system, (ii) chronic noncompliance violations, (iii) bulk power system owners, operators, and users not submitting data in a timely or accurate manner, (iv) probable violations identified during readiness evaluations, (v) spot-checks to verify submitted data, (vi) filing of a compliance complaint with the regional entity or NERC, or (vii) Nuclear Regulatory Commission-defined incidents occurring on the transmission system.
14. **Confidentiality of Compliance Audits and Compliance Violation Investigations** — All compliance violation investigations are to be non-public unless NERC, the regional entity or FERC or another applicable governmental authority with jurisdiction determines a need to conduct a public investigation. Advance authorization from the applicable ERO governmental authority is required to make public any compliance violation investigation, compliance audit, or any information relating to a compliance violation investigation or compliance audit, or to permit interventions when determining whether to impose a penalty. This prohibition on making public any compliance violation investigation or compliance audit does not prohibit NERC or a regional entity from publicly disclosing the initiation of or results from an analysis of a significant system event under Section 807 or of off-normal events or system performance under Section 808, so long as specific allegations or conclusions regarding alleged violations of reliability standards are not included in such disclosures.
15. **Report all Violations** — Each regional entity compliance enforcement program shall report to NERC all violations whether self-reported, alleged, or discovered by the region through a compliance audit or compliance violation investigation of all approved reliability standards in accordance with the *Reporting and Disclosure Process* in Section 408. The regional entity will promptly notify NERC of any change in the status of a violation and provide updates at least monthly regarding the status of any compliance audits, compliance violation investigations, or hearings.

16. **Critical Energy Infrastructure Information** — Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information. In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall be redacted according to NERC procedures and shall not be released publicly.
17. **Penalties, Sanctions, and Remedial Actions** — Each regional entity will apply all penalties, sanctions, and remedial actions directives in accordance with the approved *ERO Sanction Guidelines*. Any changes to the *ERO Sanction Guidelines* to be used by any regional entity must be approved by NERC and submitted to the appropriate ERO governmental body for approval. All confirmed violations, penalties, and sanctions will be provided to NERC for review and filing with applicable ERO governmental authorities as a notice of penalty.
18. **Mitigation of Violations** — Each regional entity compliance enforcement program will require that any bulk power system owner, operator, or user found to be in noncompliance with a reliability standard requirement shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The mitigation plan shall be reviewed and approved by the regional entity compliance staff and the regional entity's compliance panel or board as appropriate. The regional entity shall approve or reject the mitigation plan within thirty (30) days of receipt, unless the regional entity notifies the owner, operator or user and NERC within such thirty (30) day period or any extended review period that the regional entity's review period is being extended and states the length of the extended review period. If the regional entity does not notify the owner, operator or user within the initial or any extended review period that the proposed mitigation plan is accepted or rejected, the proposed mitigation plan shall be deemed accepted. If the regional entity accepts the mitigation plan, it shall notify the owner, operator or user and shall promptly submit the complete approved mitigation plan to NERC in accordance with NERC's form. NERC shall, within thirty (30) days of the receipt of the mitigation plan, approve or disapprove the mitigation plan, and in the case of disapproval provide a statement of reasons (which may include a list of changes to the mitigation plan that would make it acceptable to NERC), and shall notify the regional entity and the bulk power system owner, operator or user of NERC's approval or disapproval of the mitigation plan. NERC will submit to the Federal Energy Regulatory Commission, as non-public information, an approved mitigation plan relating to violations of reliability standards within seven (7) business days after NERC approves the mitigation plan. NERC shall subsequently publicly post the approved mitigation plan as part of the public posting of the related confirmed violation, penalty or sanction in accordance with section 408.6 or section 403.19, or as part of the public posting of a settlement in which the owner, operator or

user of the bulk power system neither admits or denies that it violated a reliability standard.

19. **Settlement Processes** — The regional entity may enter into a settlement process with owners, operators and users of the bulk power system for alleged violations of a reliability standard and any associated financial penalty, sanction, or mitigation actions. NERC must be notified of all settlement proceedings and may participate in any settlement processes. Regional entities may consider all relevant facts in the settlement. Any settlement must ensure that the reliability of the bulk power system will not be compromised by the settlement and that a violation of reliability standards will not occur as a result of the settlement. All settlements must be reported to NERC, which will in turn report the settlement of an alleged violation to the Federal Energy Regulatory Commission or the applicable ERO governmental authority. NERC shall publicly post each violation (whether confirmed or not) that is settled, and the resulting penalty or sanction.
  
20. **Regional Hearing Process** — Each regional entity compliance enforcement program shall establish and maintain a fair, independent, and nondiscriminatory process for hearing contested violations and any penalties or sanctions levied where authorized by applicable legislation or agreement. The hearing process shall allow bulk power system owners, operators, and users to contest both findings of compliance violations and any penalties and sanctions that are proposed to be levied. The regional entity hearing process shall be conducted before the regional entity board or a balanced committee established by and reporting to the regional entity board as the final adjudicator, provided, that (i) in ERCOT, the Public Utility Commission of Texas may act as the final adjudicator, and (ii) Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. The regional entity hearing process shall (i) include provisions for recusal of any members of the hearing body with a potential conflict of interest, real or perceived, from all compliance matters considered by the hearing body for which the potential conflict of interest exists and (ii) provide that no two industry sectors may control any decision and no single segment may veto any matter brought before the hearing body after recusals.

Each regional entity will notify NERC of all hearings and NERC may observe any of the proceedings. Each regional entity will notify NERC of the outcome of all hearings.

If a bulk power system owner, operator, or user has completed the regional entity hearing process and desires to appeal the outcome of the hearing, the bulk power system owner, operator, or user shall appeal to NERC, except that a determination of violation or penalty that has been directly adjudicated by an ERO governmental authority shall be appealed with that ERO governmental authority.

21. **Annual Regional Entity Compliance Enforcement Program Implementation Plan** — Each regional entity shall annually develop and submit to NERC for approval a regional entity compliance enforcement implementation plan that

identifies the reliability standards and requirements to be actively monitored (both those required by NERC and any additional reliability standards the regional entity proposes to monitor), and how each NERC and regional entity identified standard will be monitored, evaluated, reported, sanctioned, and appealed. These implementation plans will be submitted to NERC on the schedule established by NERC, generally on or about November 1 of the preceding year.

21.1 In conjunction with the annual implementation plan, each regional entity with delegated authority must report to NERC regarding how it carried out its delegated enforcement authority in the previous year, the effectiveness of the program, and changes expected to correct any deficiencies identified. Each region will provide its annual report on the schedule established by NERC, generally on or about February 15 of the following year.

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

NERC shall monitor regional entity compliance with NERC reliability standards and, if no there is no delegation agreement in effect with a regional entity for the geographic area, shall monitor bulk power system owners, operators, and users for compliance with NERC reliability standards. Industry experts may be used as appropriate in compliance violation investigations, compliance audits, and other compliance activities, subject to confidentiality, antitrust, and conflict of interest provisions.

1. **NERC Obligations** — NERC compliance enforcement staff shall monitor the compliance of the regional entity with the reliability standards for which the regional entities are responsible. NERC shall actively monitor in its annual Compliance Enforcement and Monitoring Program selected reliability standards that apply to the regional entities. NERC shall evaluate compliance and noncompliance with all of the reliability standards that apply to the regional entities and shall impose sanctions, penalties, or remedial action directives when there is a finding of noncompliance. NERC shall post all violations of reliability standards that apply to the regional entities as described in the reporting and disclosure process in Section 408.

In addition, NERC will directly monitor bulk power system owners, operators, and users for compliance with NERC Reliability Standards in any geographic area for which there is not a delegation agreement in effect with a regional entity. In such cases, NERC will serve as the Compliance Monitor described in the NERC Compliance Monitoring and Enforcement Program document. Compliance matters contested by bulk power system owners, operators, and users in such an event will be heard by the NERC Compliance and Certification Committee.

2. **Mitigation Plans** — An owner, operator or user of the bulk-power system or a regional entity found by NERC to be in noncompliance with a reliability standard shall submit to NERC for approval a mitigation plan with a timeline addressing how the noncompliance will be corrected.



3. **Compliance Audit of the Regional Entity** — NERC shall perform a compliance audit of each regional entity responsible for complying with reliability standards at least once every three years. NERC shall make an evaluation of compliance based on the information obtained through the audit. After due process is complete, the final audit report shall be made public in accordance with the reporting and disclosure process in Section 408.
4. **Appeals Process** — Any regional entity or bulk-power system owner, operator or user found by NERC, as opposed to a regional entity, to be in noncompliance with a reliability standard may appeal the findings of noncompliance with reliability standards and any sanctions, or remedial action directives that are issued by NERC pursuant to the processes described in Sections 409 through 411.

**405. Monitoring of Standards and Other Requirements Applicable to NERC**

The NERC Compliance and Certification Committee shall establish and implement a process to monitor NERC's compliance with the reliability standards that apply to NERC. The process shall use independent monitors with no conflict of interest, real or perceived, in the outcomes of the process. All violations shall be made public according to the reporting and disclosure process in Section 408. The Compliance and Certification Committee will also establish a procedure for monitoring NERC's compliance with its Rules of Procedure for the Standards Development, Compliance Enforcement, and Organization Registration and Certification Programs. Such procedures shall not be used to circumvent the appeals processes established for those programs.

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

NERC shall provide for an independent audit of its compliance monitoring and enforcement program at least once every three years, or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board. The independent audit shall meet the following minimum requirements and any other requirements established by the NERC board.

1. **Effectiveness** — The audit shall evaluate the success and effectiveness of the NERC Compliance Monitoring and Enforcement Program in achieving its mission.
2. **Relationship** — The audit shall evaluate the relationship between NERC and the regional entity compliance enforcement programs and the effectiveness of the programs in ensuring reliability.
3. **Final Report Posting** — The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. **Response to Recommendations** — If the audit report includes recommendations to improve the NERC Compliance Monitoring and Enforcement Program, the administrators of the NERC Compliance Monitoring and Enforcement Program

shall provide a written response and plan to the board within 30 days of the release of the final audit report.

**407. Penalties, Sanctions, and Remedial Actions**

1. **NERC Review of Regional Penalties and Sanctions** — NERC shall review all penalties, sanctions, and remedial actions imposed by each regional entity for violations of reliability standards for consistency with similar violations and fairness in application.
2. **Developing Penalties and Sanctions** — The regional entity compliance enforcement program staff shall use the *ERO Sanction Guidelines*, which are incorporated into these rules as **Appendix 4B**, to develop an appropriate penalty, sanction, or remedial action for a violation, and shall notify NERC of the penalty or sanction.
3. **Hearing Processes** — The regional entity shall make available a regional entity hearing process for entities to contest a finding of noncompliance, penalty, sanction, or remedial actions in which the bulk power system owner, operator, or user will be afforded the opportunity to present facts to rebut such a finding, conforming to Attachment 2 of the NERC Compliance Monitoring and Enforcement document. The regional entity shall also make available the NERC appeals process for bulk power system owners, operators, and users seeking an opportunity to dispute a penalty, sanction, or remedial action. Appeals beyond NERC of a finding of noncompliance, penalty, sanction, or remedial action will be before the appropriate ERO governmental authority.
4. **Effective Date of Penalty** — Where authorized by applicable legislation or agreement, no penalty imposed for a violation of a reliability standard shall take effect until the thirty-first day after NERC files, with the applicable ERO governmental authority, a “notice of penalty” and the record of the proceedings in which the violation and penalty were determined, or such other date as ordered by the ERO applicable governmental authority.

**408. Reporting and Disclosure Process**

1. **Reporting Requirements** — Each regional entity shall report all known violations, self-reported, confirmed, and alleged, of all reliability standards to NERC in accordance with the requirements established in the NERC Compliance Monitoring and Enforcement Program procedures document. Probable violations from NERC readiness evaluations will be treated as alleged violations when reported by the regional entity to NERC after review by regional entity staff. Each regional entity shall promptly report any change in the status of a violation and the disposition of each violation. Reports on the disposition of a violation will be provided at least quarterly or as otherwise required by NERC for reporting to ERO governmental authorities. NERC shall promptly notify the applicable ERO governmental authority of any self-reported, confirmed, or alleged violation of a reliability standard, any compliance violation investigation, any imposition of a penalty or sanction, or any remedial action directive.

- 1.1 Requirements of reliability standards for which noncompliance may cause bulk power system reliability to be diminished or at risk, will be identified by NERC and require reporting by the regional entity to NERC within 48 hours after the regional entity learns of the violation. Such reports shall include information regarding the nature and reliability impact of the alleged violations, the identity of the organizations involved, and the status and timetable of any compliance investigation. NERC will promptly report such violation to the applicable ERO governmental authority.
2. **Reporting Process** — NERC shall implement and maintain a reporting process and utilize appropriate tools to facilitate reporting of violations. The reporting process shall identify all of the information required to be included in a violation report. NERC will report the disposition of each violation or alleged violation to the applicable ERO governmental authority on a quarterly basis.
3. **Confidential Information** — NERC will treat all alleged violations and matters related to a compliance violation investigation, including the status of the compliance violation investigation, as confidential in accordance with Section 1500. Any entity seeking to protect information as confidential shall follow the procedures of Section 1500. This information may result from compliance violation investigations, compliance audits, and proceedings concerning an alleged violation or proposed penalty or sanction.

Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information in accordance with Section 1500.

  - 3.1 The regional entity and NERC shall give bulk power system owners, operators, and users a reasonable opportunity to demonstrate that information concerning a violation is confidential before such report is disclosed to the public.
  - 3.2 The types of information that will be considered confidential and will not (subject to statutory and regulatory requirements) be disclosed in any public information reported by NERC are identified in Section 1500.
4. **Reporting Updated Information** — Each regional entity and NERC shall report new information on each confirmed or alleged violation as it is received and processed.
5. **Violation Information Review** — NERC staff shall periodically review and analyze all reports of violations to identify trends, chronic violators, and other pertinent reliability issues.
6. **Public Posting** — When the affected bulk power system owner, operator, or user either agrees with the violation(s) or report, or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall publicly post each

confirmed violation, penalty or sanction, and final compliance audit or compliance violation investigation report on its Web site.

- 6.1 Each bulk power system owner, operator, or user may provide NERC with a statement to accompany the violation or report to be posted publicly. The statement must be on company letterhead and include a signature, as well as the name and title of the person submitting the information.
- 6.2 In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information (*NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information* may be used as a guide) or other confidential information shall be redacted in accordance with Section 1500 and not be released publicly.
- 6.3 Subject to redaction of critical energy infrastructure information or other confidential information, for each confirmed violation or settlement relating to an alleged violation, the public posting shall include the name of any relevant entity, the nature, time period, and circumstances of such violation or alleged violation, any mitigation plan to be implemented by the entity in connection with the confirmed violation or settlement, and sufficient facts to enable owners, operators and users of the bulk power system to evaluate whether they have engaged in or are engaging in similar activities.

#### **409. Review of NERC Decisions**

1. **Scope of Review** — A registered entity or a regional entity wishing to challenge a finding of noncompliance and the imposition of a penalty for a compliance measure directly administered by NERC, or a regional entity wishing to challenge a regional compliance program audit finding, may do so by filing a notice of the challenge with NERC's director of compliance no later than 21 days after issuance of the notice of finding of violation or audit finding. Appeals by registered entities of decisions of regional entity hearing bodies shall be pursuant to sections 407.3 and 410.
2. **Contents of Notice** — The notice of challenge shall include the full text of the decision that is being challenged, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief.
3. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of challenge, the NERC Director of Compliance may file with the hearing body a response to the issues raised in the notice, with a copy to the regional entity.
4. **Hearing by Compliance and Certification Committee** — The NERC Compliance and Certification Committee shall provide representatives of the

regional entity or registered entity, and the NERC Compliance Monitoring and Enforcement Program an opportunity to be heard and shall decide the matter based upon the filings and presentations made, with a written explanation of its decision.

5. **Appeal** — The regional entity, or registered entity may appeal the decision of the Compliance and Certification Committee by filing a notice of appeal with NERC’s director of compliance no later than 21 days after issuance of the written decision by the Compliance and Certification Committee. The notice of appeal shall include the full text of the written decision of the Compliance and Certification Committee that is being appealed, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not presented to the Compliance and Certification Committee.
6. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of appeal, the NERC Compliance Monitoring and Enforcement Program staff may file its response to the issues raised in the notice of appeal, with a copy to the entity filing the notice.
7. **Reply** — The entity filing the appeal may file a reply within 7 days.
8. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record, the response, and any reply. At its discretion, the Compliance Committee may invite representatives of the regional entity or registered entity, and the NERC Compliance Monitoring and Enforcement Program to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
9. **Impartiality** — No member of the Compliance and Certification Committee or the Board of Trustees Compliance Committee having an actual or perceived conflict of interest in the matter may participate in any aspect of the challenge or appeal except as a party or witness.
10. **Expenses** — Each party in the challenge and appeals processes shall pay its own expenses for each step in the process.
11. **Non-Public Proceedings** — All challenges and appeals shall be closed to the public to protect confidential information.

#### **410. Appeals from Final Decisions of Regional Entities**

1. **Time for Appeal** — An owner, operator or user of the bulk-power system wishing to appeal from a final decision of a regional entity that finds a violation of a reliability standard or imposes a penalty for violation of a reliability standard shall file its notice of appeal with NERC’s director of compliance, with a copy to

the regional entity, no later than 21 days after issuance of the final decision of the regional entity hearing body. The same appeal procedures will apply regardless of whether the matter first arose in a compliance violation investigation, compliance audit or self-report, or in a reliability readiness evaluation.

2. **Contents** — The notice of appeal shall include the full text of the final decision of the regional entity hearing body that is being appealed, a concise statement of the error or errors contained in the final decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not first presented during the compliance hearing before the regional entity hearing body.
3. **Response by Regional Entity** — Within 21 days after receiving a copy of the notice of appeal, the regional entity shall file the entire record of the matter with NERC’s director of compliance, with a copy to the entity filing the notice, together with its response to the issues raised in the notice of appeal.
4. **Reply** — The entity filing the appeal may file a reply to the regional entity within 7 days.
5. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record of the matter from the regional entity, the response, and any reply filed with NERC. At its discretion, the Compliance Committee may invite representatives of the entity making the appeal and the regional entity to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
6. **Expenses** — Each party in the appeals process shall pay its own expenses for each step in the process.
7. **Non-Public Proceedings** — All appeals shall be closed to the public to protect confidential information.

#### **411. Hold Harmless**

A condition of invoking the challenge or appeals processes under Section 409 or 410 is that the entity requesting the challenge or appeal agrees that neither NERC (defined to include its members, Board of Trustees, committees, subcommittees, staff and industry volunteers), any person assisting in the challenge or appeals processes, nor any company employing a person assisting in the challenge or appeals processes, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the challenge or appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.

## SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

### 501. Scope of the Organization Registration and Certification Program

Enforcing compliance with the NERC reliability standards requires that the identity of those responsible for complying with the standards be known and that those with primary reliability responsibilities be reviewed and certified as meeting established minimum requirements for performing those tasks. NERC shall develop and maintain a compliance registry and certification program for the purpose of promoting compliance with reliability standards and enhancing the reliability of the bulk power system.

The purpose of the compliance registry will be to clearly identify those entities that are responsible for compliance with reliability standards. Organizations listed on the registry will be responsible for knowing the content of and for complying with the NERC reliability standards. Organizations listed in the registry are not, nor do they become, members of NERC or a regional entity by virtue of being listed in the compliance registry. Membership in NERC is governed by Article II of NERC's bylaws; membership in a regional entity is governed by that entity's bylaws or rules.

Organization registration and certification may be delegated to regional entities in accordance with the procedures in this Section 500, the NERC *Organization Registration and Certification Manual*, which is incorporated into these rules as **Appendix 5**, and approved regional entity delegation agreements or other applicable agreements.

1. **Compliance Registry** — NERC shall establish and maintain a compliance registry of the bulk power system owners, operators, and users that are subject to approved reliability standards.
  - 1.1 The registry shall set forth the identity and functions performed for each organization responsible for meeting requirements of the reliability standards including: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, transmission service providers, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to complete the registration.
  - 1.2 NERC and regional entities assisting NERC in the development of the compliance registry shall consider the following factors in determining which organizations should be placed in the registry:
    - 1.2.1 Owners and operators of bulk power system facilities will generally be included in the registry;

- 1.2.2 As identified by regional entities, electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher will be considered part of the bulk power system;
- 1.2.3 Radial transmission facilities serving only load with one transmission source, without more, will not be considered part of the bulk power system;
- 1.2.4 A customer that receives electric service at retail and does not otherwise directly receive, sell, purchase, or transmit power over the bulk power system or own, operate, maintain, or control facilities or systems that are part of the bulk power system will not in general be considered a user of the bulk power system;
- 1.2.5 An entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity's actions or facilities have no material impact on the bulk power system;
- 1.2.6 Notwithstanding the other considerations in this Section 1.2, if the consequences of an entity's actions or inactions could have a material impact on the bulk power system, that entity may be considered a user of the bulk power system;
- 1.2.7 (a) A generation or transmission cooperative, a joint-action agency or another organization (a Joint Registration Organization or JRO) may be registered, in lieu of each of the JRO's members or related entities being registering individually, by the JRO accepting the reliability functions identified in Section 1.1 above, or (b) a JRO and its members or related entities may enter into a written agreement as to which of them will be responsible for one or more reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards, in either case in accordance with the provisions specified in Section 507 (each of (a) and (b), a "joint registration").

For purpose of this Section 501.1.2.7 and Section 507, a "related entity" is an entity whose operations in relation to the operation of the JRO make it feasible for the JRO to accept responsibility for reliability functions for which the related entity would otherwise be responsible. A non-exclusive list of examples of JROs and related entities includes (i) a balancing authority or a transmission provider as the JRO, and (ii) a load-serving entity or a distribution



provider within the balancing authority's control area or receiving transmission services from the transmission provider, as the related entity.

- 1.3 NERC and the regional entities shall use the following procedure for establishing and maintaining the compliance registry:
  - 1.3.1 NERC shall notify each organization of its intent to place the organization on the compliance registry.
  - 1.3.2 Any organization receiving such a notice may challenge the decision to include it on the compliance registry by filing its written objection with NERC's director of compliance within 21 days stating the reasons it believes it should not be considered a bulk power system owner, operator, or user.
  - 1.3.3 The Compliance Committee of the Board of Trustees will promptly issue a written decision on the challenge, including the reasons for the decision.
  - 1.3.4 The decision of the Compliance Committee shall be final unless, within 21 days, the organization appeals the decision to the applicable governmental authority.
  - 1.3.5 At any time a person may recommend in writing, with supporting reasons, to the director of compliance that an organization be added to or removed from the compliance registry.
  - 1.3.6 The compliance registry shall be dynamic and be revised as necessary to take account of changing circumstances. NERC will take such recommendations, and other applicable information, under advisement as it determines whether an entity should be on the compliance registry.
  - 1.3.7 Each entity identified in the registry shall notify NERC and its corresponding regional entity of any changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with such standards.
- 1.4 For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability standards to the fullest extent practical, and (2) there is no duplication of such coverage or of required oversight of such coverage.

In particular the process shall:

- 1.4.1 Ensure that all areas are under the oversight of one and only one reliability coordinator.
- 1.4.2 Ensure that all balancing authorities and transmission operator entities<sup>2</sup> are under the responsibility of one and only one reliability coordinator.
- 1.4.3 Ensure that all transmission elements of the bulk power system are the responsibility and under the control of one and only one transmission planner, planning authority, and transmission operator.
- 1.4.4 Ensure that all loads and generators are under the responsibility and control of one and only one balancing authority.
- 1.5 NERC shall maintain publicly available process documentation.
- 1.6 NERC shall maintain the compliance registry of organizations responsible for meeting the requirements of the reliability standards currently in effect on its Web site and shall update the compliance registry monthly.
2. **Entity Certification** — NERC shall provide for certification of all entities with primary reliability responsibilities requiring certification as established in the NERC reliability standards. The NERC program shall:
  - 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include reliability coordinators, transmission operators, and balancing authorities. Other entities may be added, as required, by approved reliability standards.
  - 2.2 Certify each entity's ability to meet the minimum requirements established by the NERC reliability standards for each function.
  - 2.3 Maintain process documentation.
  - 2.4 Maintain records of currently certified entities.

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<sup>2</sup> Some organizations perform the listed functions (e.g., balancing authority, transmission operator) over areas that transcend the footprints of more than one reliability coordinator. Such organizations will have multiple registrations, with each such registration corresponding to that portion of the organization's overall area that is within the footprint of a particular reliability coordinator.

**3. Delegation and Oversight**

- 3.1 NERC may delegate the responsibilities of registration and certification to regional entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the regional entity or other applicable agreement. The regional entity shall administer an organization registration and certification program to meet NERC's program goals and requirements.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of organization registration and certification within the geographic or electrical boundaries of a regional entity in the event that no entity is certified as a regional entity for that region, or the regional entity withdraws as a regional entity, or does not operate its organization registration and certification program in accordance with delegation agreements and other requirements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee each regional entity registration and certification program that is delegated authority through a delegation agreement or other applicable agreement.
  - 3.3.1 This program shall monitor whether the regional entity carries out its organization registration and certification program in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability of outcomes within each regional entity's certification and registration program and among all of the programs.
  - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in certification audits and periodic reviews of program documents and records.

**502. ERO Organization Registration and Certification Program Requirements**

- 1. NERC shall have final authority in all matters constituting the organization registration and certification program.
  - 1.1 The roles and authority of regional entities in the program are delegated from NERC pursuant to the rules of procedure through regional delegation agreements or other applicable agreements.
  - 1.2 Processes for the program shall be owned by NERC; materials that each regional entity may use to participate in the program may be adapted by that organization subject to prior review and approval by NERC.
  - 1.3 Regional entities participating in the program shall perform their roles and responsibilities to meet NERC's requirements, as specified in the rules of procedure or NERC approved materials, including requirements for

- quality, thoroughness, timeliness, accuracy, efficiency, cost-effectiveness, and participation.
- 1.4 Regional entity's decisions to grant or deny certifications shall be subject to NERC review and action, including modification or reversal.
  - 1.5 Regional entity's decisions with respect to the use of the transitional certification processes, as now provided for within the NERC *Organization Registration and Certification Manual (Appendix 5)*, are subject to NERC review and action, including modification or reversal, should NERC deem such review or action warranted.
  - 1.6 Notwithstanding an entity's interest and right to object to the makeup of the certification team that will conduct the review of that entity, NERC, or the regional entity as authorized by NERC, will have final authority on the membership and member roles of that team.
  - 1.7 NERC, or the regional entity as authorized by NERC, shall make all assessments and decisions with respect to all aspects of the organization registration and certification program, including the completeness and accuracy of entities' applications.
2. To ensure consistency and fairness of the program, NERC shall develop procedures to be used by all regional entities in carrying out their organization registration and certification programs, in accordance with the following criteria:
- 2.1 NERC and the regional entities shall have data management processes and procedures that provide for integrity and retention of data and information collected.
  - 2.2 To maintain the integrity of the NERC Organization Registration and Certification Program, NERC, regional entities, certification audit team members, and committee members shall maintain the confidentiality of information provided by entities in order to become registered or certified.
    - 2.2.1 NERC and the regional entities shall have appropriate codes of conduct and confidentiality agreements for staff and other certification audit participants. Individuals not bound by ERO or approved regional entity codes of conduct and who serve on certification-related committees or audit teams shall sign an ERO confidentiality agreement prior to participating on the committee or team.
    - 2.2.2 Staff, committee, and audit team members shall maintain the confidentiality of any certification-related discussions or documents that are designated as confidential (see Section 1500 for types of confidential information). Staff, committee, and audit

team members shall treat as confidential the individual comments expressed during audits and report-drafting sessions.

- 2.2.3 Copies of notes, draft reports, and other interim documents developed or used during a certification audit shall be destroyed after the public posting of a final, uncontested report.
  - 2.2.4 Information deemed by an entity, a regional entity, or NERC as confidential or critical energy infrastructure information shall not be distributed outside of a committee or team, or released publicly.
  - 2.2.5 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to immediate dismissal from the audit team and may be prohibited from future participation in compliance program activities by the regional entity or NERC.
  - 2.2.6 NERC shall develop and provide training in auditing skills to all individuals who participate in certification audits. Training for ERO and regional entity personnel, as well as audit team leaders, shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.
- 2.3 An entity that is determined to be competent to perform a function after completing all certification requirements shall be deemed certified by NERC to perform that function.
- 2.3.1 An entity deemed certified by NERC to perform a function shall be considered and may be referred to, for example, as a certified transmission operator, certified balancing authority, or certified reliability coordinator. Only entities that have received such certifications from NERC shall be so designated.
  - 2.3.2 NERC shall award certification to an entity only after it has demonstrated full competency to all certification requirements. An entity shall be awarded certification only for each function for which it has demonstrated full competency

**503. Regional Entity Implementation of Organization Registration and Certification Program Requirements**

- 1. **Delegation** — Recognizing the regional entity’s knowledge of and experience with their members, NERC may delegate responsibility for organization

registration and certification to the regional entity through a delegation agreement or such responsibilities may be established through another applicable agreement.

2. **Registration** — The following organization registration activities shall be performed by the regional entity in accordance with the NERC Organization Registration and Certification Procedures, which are incorporated into the Rules of Procedure as **Appendix 5**.
  - 2.1 Entities seeking registration shall contact the regional entity in which they operate to become registered and, if necessary, certified.
  - 2.2 Regional entities shall verify that all balancing authorities and transmission operators are under the responsibility of one and only one reliability coordinator.
  - 2.3 Regional entities shall verify that all transmission elements of the bulk power system operated within their geographic boundaries are under the authority and control of one and only one transmission planner, planning authority, transmission owner, and transmission operator.
  - 2.4 Regional entities shall verify that all loads and generation sources within their geographic boundaries are under the authority and control of one and only one balancing authority.
  - 2.5 Regional entities shall verify that no geographical or electrical areas of the bulk power system within their boundaries have duplication of coverage or are lacking an entity to perform required duties and tasks as identified in the reliability standards.
3. **Certification** — The following organization certification activities shall be performed by the regional entity in accordance with an approved ERO delegation agreement or another applicable agreement:
  - 3.1 Entities seeking certification to perform one of the functions requiring certification shall contact the regional entity for the region(s) in which they operate to apply for certification. NERC shall have oversight of the regional entity's certification activities and processes.
  - 3.2 Entities seeking certification and other affected operators shall provide all information and data requested by NERC or the regional entity to conduct the certification process, in accordance with 18 C.F.R. Section 39.2 in the United States.
  - 3.3 Regional entities shall contact entities directly and provide notice of the requirement to be certified by NERC and initiate the process to certify any entities that do not voluntarily contact the regional entity or NERC.

- 3.4 Regional entities shall notify NERC of all certification applicants, including those not voluntarily seeking certification.
- 3.5 The regional entity shall establish certification procedures to include audit processes, schedules and deadlines, expectations of the applicants and all entities participating in the audit and certification processes, and requirements for certification auditors.
  - 3.5.1 The regional entity certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (and requesting a demonstration of all tools identified in the certification standard), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the certification standard), reviewing certification documents and projected system operator work schedules, and reviewing any additional documentation that is needed to support the completed questionnaire or inquiries arising during the site visit.
  - 3.5.2 All industry experts and regional members participating in certification audits shall successfully complete appropriate training provided by NERC or the regional entity prior to performing an audit.
  - 3.5.3 The regional entity certification procedures will provide for preparation of a written report by the audit team detailing any deficiencies that must be resolved prior to certification along with any other recommendations for consideration by the entity, the regional entity, or NERC.
  - 3.5.4 The regional entity shall evaluate the competency of entities requiring certification to meet the minimum requirements established by the standards for each such function based on the requirements established by NERC.

#### **504. Appeals**

- 1. NERC shall maintain an appeals process to resolve any disputes related to registration or certification activities (*Organization Registration and Certification Manual — Appendix 5*).
- 2. Each regional entity with delegated responsibilities shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The regional entity appeals process shall culminate with the regional board or a committee established by and reporting to the board as the final adjudicator, provided that: (1) in ERCOT, the Public Utility Commission of Texas may act as the final adjudicator, and (2) where applicable, Canadian provincial governmental

authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings.

**505. Program Maintenance**

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the organization registration and certification program.

**506. Independent Audit of NERC Organization Certification Program**

1. NERC shall provide for an independent audit of its organization certification program at least once every three years, or more frequently, as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC organization certification program in achieving its mission.
3. The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.

**507. Provisions Relating to Joint Registrations and Joint Registration Organizations**

1. **Registration by a JRO.** In addition to registering as the entity responsible for all functions that a JRO performs itself, a JRO may register on behalf of one or more of its members or related entities for one or more functions as to which such members or related entities would otherwise be required to register, and thereby accept on behalf of such members or related entities all compliance responsibility, including reporting requirements, for all requirements of reliability standards applicable to the function or functions for which the JRO has registered on behalf of its members or related entities. Any entity seeking to register as a JRO for any or all requirements identified in the reliability standards that would otherwise be the responsibility of one or more of its members or related entities shall provide to the applicable regional entity information, in the form requested by the regional entity, sufficient to identify whether the entity or its member(s) or related entities will be responsible for compliance with each provision of the reliability standards for the applicable functional responsibilities covered by the joint registration. The JRO must identify its primary compliance contact. The JRO primary compliance contact is responsible for providing all of the information and data, including submitting reports, as needed by the regional entity for performing assessments of compliance.
2. **Joint registration pursuant to written agreement.** Where a JRO and any of its members or related entities agree, in writing, upon a division of compliance responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular



reliability standard(s), both the JRO and such member(s) or related entit(ies) shall register as an organization responsible for that function. The JRO and its member(s) or related entit(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration. Neither NERC nor the regional entity shall be parties to any such agreement between a JRO and its member or related entit(ies), nor shall NERC or the regional entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the joint registration.

3. NERC or the regional entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the JRO and its member(s) or related entit(ies), and may request such additional information as NERC or the regional entity deems appropriate.
4. The regional entity shall notify NERC of each joint registration that the regional entity accepts. The regional entity's acceptance of a joint registration shall be a representation by the regional entity to NERC that the regional entity has concluded the joint registration will result in (1) no areas lacking any entities to perform the duties and tasks identified in and required by the reliability standards, and (2) no unnecessary duplication of such coverage of areas by entities to perform the duties and task identified in and required by the reliability standards or of required oversight of such coverage.
5. NERC shall maintain, and shall post on its web site, a Joint Registration Organization registry listing all joint registrations that have been accepted by NERC or by a regional entity and the reliability standards or requirements thereof for which each JRO and each of its members or related entities is responsible under the joint registration. The postings on NERC's web site shall clearly identify the compliance responsibilities of the JRO and of each of its member(s) or related entit(ies). Such postings are intended to enable reliability coordinators and other system operators to be fully aware of responsibilities and chains of command in order to respond quickly and decisively to system operation events.
6. Annually following submission of a joint registration, the JRO shall provide the regional entity with a list, in a form specified by the regional entity, that identifies the members or related entities and the functions for which the JRO has registered on behalf of such members or related entities and for which the JRO assumes compliance responsibility. Additionally, a JRO shall provide a revised list of compliance responsibilities to the regional entity each time the JRO accepts additional compliance responsibilities for a member or related entity or for a new member or related entity and each time that any compliance reliability reverts from the JRO to a member or related entity. The regional entity shall promptly notify NERC of each such revision.
7. In the event of a violation of a reliability standard or of a requirement of a reliability standard, the JRO or its member or related entity identified in the Joint

Registration Organization registry as responsible for such reliability standard or requirement shall be identified in the notice of alleged violation and shall be assessed the sanction or penalty for the violation. In accordance with the NERC *Sanctions Guidelines*, for a violation that is attributable to a member or related entity that is registered under the joint registration, the penalty or sanction imposed for the violation will bear reasonable relation to the violation as incurred by that member or related entity and not the JRO. In the event a regional entity is not able to determine, based on the joint registration and the annual or other revised list submitted by the JRO, which entity is responsible for a particular reliability standard or requirement thereof that has been violated, the regional entity shall issue the notice of alleged violation to, and shall impose any sanction or penalty on, the JRO. NERC and the regional entity shall have no responsibility for any allocation or collection of penalties or sanctions between or among the JRO and its member(s) or related entit(ies).

- 8. Individual member registration.** Nothing in this Section 507 shall preclude a member of a JRO, a related entity, or any other entity, from registering on its own behalf and undertaking full compliance responsibility, including reporting requirements, for the reliability standards applicable to the function(s) for which the member or other entity is registering. A JRO member or related entity that registers as responsible for any reliability standard or requirement of a reliability standards shall inform the JRO of its registration.

## **SECTION 600 — PERSONNEL CERTIFICATION**

### **601. Scope of Personnel Certification**

Maintaining the reliability of the bulk electric system through implementation of the reliability standards requires skilled, trained and qualified system operators. The System Operator Certification Program provides the mechanism to ensure system operators are provided the education and training necessary to obtain the essential knowledge and skills and are therefore qualified to operate the bulk electric system. NERC, as the ERO, will ensure skilled, trained, and qualified system operators through the System Operator Certification Program.

NERC shall develop and maintain a personnel certification program to evaluate individuals and to issue credentials to individuals who demonstrate the required level of competence. A current version of such a program is the *System Operator Certification Program Manual*, which is incorporated into these rules as **Appendix 6**.

### **602. Structure of ERO Personnel Certification Program**

1. The NERC personnel certification program shall be international in scope.
2. The personnel certification program shall have a governing body that (1) is able to independently exercise decision-making for all matters pertaining to certification, (2) includes individuals from the discipline being certified and whose composition addresses the needs of the users of the program (e.g., employers, regulators, etc.), and (3) has representation for each specialty or level within a discipline.
3. NERC shall maintain a nominating process for membership in the governing body. Nominations shall be open to all interested parties and self-nominations shall be accepted. The NERC Board of Trustees shall appoint members to the governing body from among those nominated. The members of the governing body shall serve at the pleasure of the board.
4. The personnel certification program governing body shall have control over the matters related to the personnel certification and recertification programs listed below, without being subject to approval by any other body.
  - 4.1 Policies and procedures, including eligibility requirements and application processing.
  - 4.2 Requirements for personnel certification, maintaining certification, and recertification.
  - 4.3 Examination content, development, and administration.
  - 4.4 Examination cut score.
  - 4.5 Grievance and disciplinary processes.

- 4.6 Governing body and subgroup(s)' meeting rules including agenda, frequency, and related procedures.
  - 4.7 Subgroup(s) appointments and work assignments.
  - 4.8 Publications about personnel certification and recertification.
  - 4.9 Setting fees for application, and all other services provided as a part of the personnel certification and recertification activities.
  - 4.10 Program funding, spending, and budget authority. Financial matters related to the operation of the program shall be segregated from other NERC activities.
5. The personnel certification program shall utilize written procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors.
  6. The personnel certification program shall be separate from the accreditation and education functions of NERC in related disciplines.
  7. No member of the personnel certification program governing body or staff member working with the personnel certification program governing body shall have or exercise any authority or responsibility for compliance matters related to reliability standards concerning personnel certification.

**603. Candidate Testing Mechanisms**

1. The personnel certification program shall utilize reliable testing mechanisms to evaluate individual competence in a manner that is objective, fair to all candidates, job-related, and based on the knowledge and skill needed to function in the discipline.
2. The personnel certification program shall implement a formal policy of periodic review of the testing mechanisms to ensure ongoing relevance of the mechanisms to knowledge and skill needed in the discipline.
3. The personnel certification program shall utilize policies and procedures to ensure that all test administration and development materials are secure and demonstrate that these policies and procedures are consistently implemented.
4. The personnel certification program shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted in the psychometric community as being fair and reasonable.
5. The personnel certification program shall conduct ongoing studies to substantiate the reliability and validity of the testing mechanisms.

6. The personnel certification program shall utilize policies and procedures that govern how long examination records are kept in their original format.
7. The personnel certification program shall demonstrate that different forms of the testing mechanisms assess equivalent content and that candidates are not penalized for taking forms of varying difficulty.

**604. Public Information About the Personnel Certification Program**

1. The personnel certification program shall provide for publishing and availability of general descriptive material on the procedures used in examination construction and validation; all eligibility requirements and determination; fees; and examination administration documents, including: reporting of results, recertification requirements, and disciplinary and grievance procedures.
2. The personnel certification program shall publish and make available a comprehensive summary or outline of the information, knowledge, or functions covered by the examination.
3. The personnel certification program shall publish and make available at least annually a summary of certification activities for the program, including at least the following information: number of examinations delivered, the number passed, the number failed, and the number certified.

**605. Responsibilities to Applicants for Certification or Recertification**

The personnel certification program:

1. Shall not discriminate among applicants as to age, gender, race, religion, national origin, disability, or marital status and shall include a statement of non-discrimination in announcements of the program.
2. Shall comply with all requirements of applicable federal and state/provincial laws with respect to all certification and recertification activities, and shall require compliance of all contractors and/or providers of services.
3. Shall make available to all applicants copies of formalized procedures for application for, and attainment of, personnel certification and recertification and shall uniformly follow and enforce such procedures for all applicants.
4. Shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.
5. Shall provide competently proctored examination sites.
6. Shall uniformly report examination results to applicants in a timely manner.
7. Shall give applicants failing the examination information on general content areas of deficiency.

8. Shall implement policies and procedures providing due process for applicants questioning eligibility determination, examination results, and certification status, and shall publish this information. A current version of such a procedure is the *NERC System Operator Certification Dispute Resolution Process*, which is incorporated into these rules as part of **Appendix 6**.
9. Shall develop and maintain a program manual containing the processes and procedures for applicants for certification and recertification.

**606. Responsibilities to the Public and to Employers of Certified Practitioners**

The personnel certification program:

1. Shall demonstrate that the testing mechanisms adequately measure the knowledge and skill required for entry, maintenance, and/or advancement in the profession for each position to be certified.
2. Shall award certification and recertification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable.
3. Shall periodically publish or maintain, in an electronic format, a current list of those persons certified in the programs and have policies and procedures that delineate what information about a credential holder may be made public and under what circumstances.
4. Shall have formal policies and procedures for discipline of a credential holder, including the revocation of the certificate, for conduct deemed harmful to the public or inappropriate to the discipline (e.g., incompetence, unethical behavior, physical or mental impairment affecting performance). These procedures shall incorporate due process. The current procedure is the *NERC Certified System Operator Credential Disciplinary Action Procedure*, which is incorporated into these rules as part of **Appendix 6**.
5. Shall demonstrate that any title or credential awarded accurately reflects or applies to the practitioner's daily occupational or professional duties and is not confusing to employers, consumers, regulators, related professions, and/or other interested parties.

## **SECTION 700 — RELIABILITY READINESS EVALUATION AND IMPROVEMENT**

### **701. Scope of the Reliability Readiness Evaluation and Improvement Program**

The readiness evaluations are designed to ensure that operators of the bulk electric system have the facilities, tools, processes, and procedures in place to operate reliably under future conditions. The evaluations help balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators recognize and assess their reliability responsibilities and evaluate how their operations support those responsibilities. The evaluation team may also evaluate transmission planner and transmission owner functions in concert with the evaluation of reliability coordinators, balancing authorities, and transmission operators. NERC uses the results of these evaluations to champion the changes required to improve the reliability performance of these entities and achieve excellence in the assigned reliability functions and responsibilities. A companion goal of the program is to identify and promote examples of excellence within the industry.

Monitoring compliance with reliability standards provides only a historical perspective by determining if a registered entity has complied with the NERC reliability standards over some prescribed period in the past. An effective ERO will also recognize that monitoring compliance absent a system emergency or disturbance does not effectively preserve reliability or ensure the ability to perform and achieve excellence during a system emergency or disturbance.

NERC identifies those entities with primary reliability responsibilities and provides guidance to help them achieve operational excellence through the Reliability Readiness Evaluation and Improvement Program. This program recognizes that standards cannot prescribe all aspects of reliable operations and that NERC standards present a threshold, not a target, for performance and excellence in the industry. Balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators must be ready to perform under emergency conditions while striving for excellence in their assigned reliability functions and responsibilities.

NERC maintains a reliability readiness evaluation and improvement program for the purpose of promoting compliance with reliability standards and enhancing the reliability of the bulk power system. The program assesses the reliability readiness of reliability coordinators, balancing authorities, transmission operators, and others performing delegated tasks for these operators to operate the bulk power system reliably, and to identify opportunities for improvement. NERC may also create sector forums (see section 712) to enhance the reliability of the bulk power system by providing a mechanism for members of a particular industry sector, using peer review and mutual assistance, to identify best practices in the safety and reliability of the bulk power system, to disseminate lessons learned from disturbances, near misses, and other events, and to encourage all members of the sector to implement those practices and lessons on a timely basis. The Reliability Readiness Evaluation and Improvement Program will coordinate with the sector forums as appropriate to provide input from the readiness evaluations.

**702. Structure of the Reliability Readiness Evaluation and Improvement Program**

1. NERC shall have overall responsibility for coordinating readiness evaluations in accordance with the NERC *Readiness Evaluation Procedure*, the current version of which is incorporated into these rules as **Appendix 7**. These rules of procedure take precedence for any conflicts or inconsistencies that exist with the NERC *Readiness Evaluation Procedure*.
2. NERC staff shall have the primary responsibility for executing the following procedural steps: (1) development of the overall schedule in conjunction with the appropriate regional entity to coordinate evaluation activities; (2) initiation of the evaluation process for each entity; (3) provision of evaluation questionnaires, processes, data requests, documentation, and criteria; (4) identification of readiness evaluation team members; (5) coordination of evaluated entity and neighboring entity questionnaires; and (6) publication of findings.
3. The NERC evaluation team shall perform the following functions: (1) review the entity's questionnaire responses and documentation and research any issues or events identified; (2) perform the on-site evaluations; and (3) prepare a report of findings.

**703. Scheduling of Readiness Evaluations**

1. NERC staff in conjunction with the regional entities shall prepare a three-year cycle of readiness evaluations that will be updated annually by a date specified by NERC.
2. NERC shall obtain from the regional entity the identity of a contact person at each entity to be evaluated.
3. Readiness evaluations and compliance audits shall be conducted with separate processes, but may occur concurrently if separate personnel are used.

**704. Resources for Readiness Evaluations**

1. NERC shall select an evaluation team in advance of each evaluation according to a schedule specified by NERC.
2. The evaluation team shall consist of members possessing expertise and experience specified by NERC.
3. The evaluation team shall be of a size and composition specified by NERC.
4. If an entity to be evaluated raises an objection to an evaluation team member's participation, it must do so in writing to NERC stating clearly the basis for the objection. Upon receipt of such objection, the Director of NERC's Readiness Evaluation and Improvement program will attempt to resolve the issue to the mutual agreement of the entity being evaluated and the individual and/or entity for whom the individual is employed, utilizing guidance from the regional entities



as appropriate.

If this process does not result in a mutually acceptable agreement, the Director will resolve the objection based on the following factors:

- a. Team member was previously employed by entity to be evaluated within the previous three years;
  - b. Team member was previously employed by entity to be evaluated and whose employment ended unfavorably;
  - c. Team member is in active litigation with the entity to be evaluated;
  - d. Team member has a direct financial interest in the entity to be evaluated;
  - e. Team member is employed in a company under the same corporate umbrella as the entity to be evaluated;
  - f. The team member's employer and the entity to be evaluated are engaged in active litigation; and
  - g. Other matters that may interfere with the exercise of independent judgment.
5. NERC shall develop and provide training in evaluation skills to all individuals who participate in readiness evaluations. Training for NERC evaluation team leaders and regional entity personnel shall be more comprehensive than training given to industry experts and regional members.
6. All team members and observers shall sign and abide by a NERC confidentiality agreement prior to participating in any of the evaluation activities unless bound by NERC or other codes of conduct acknowledged by NERC to be acceptable. Copies of the signed confidentiality agreements shall be maintained by NERC and be available upon request by the evaluated entity.
7. To maintain the focus and size of the evaluation team, the use of observers will be limited. Observers must be expressly agreed upon by both NERC and the entity being evaluated. The role of observers is limited to observing the process. Observers shall not participate in the creation and editing of the report or its findings, or interfere with the evaluation process. The team leader may remove any observer from the evaluation who is not abiding by these criteria.

#### **705. Pre-Readiness Evaluation Activities**

NERC will require certain information to perform readiness evaluations of operating entities. These entities shall provide to NERC such information as is necessary to conduct the readiness evaluations.

1. Prior to an evaluation, NERC shall provide the entity a request for information and a questionnaire. The entity shall return the requested information and the completed questionnaire according to a schedule specified by NERC. In its

submission to the request for information, the entity to be evaluated shall identify all tasks that have been delegated to another entity.

2. NERC shall provide a questionnaire to neighboring operating entities with which the evaluated entity routinely interacts. The neighboring operating entities shall return the completed questionnaires within a period of time specified by NERC.
3. Prior to the evaluation, NERC shall provide an evaluation agenda to the entity to be evaluated.
4. The evaluation team will receive the following information upon receipt of a signed confidentiality agreement according to a schedule specified by NERC.
  - a. The evaluated entity's completed questionnaire and supporting documentation;
  - b. The neighboring operating entities' completed questionnaires; and
  - c. The on-site agenda.
5. The evaluation team will coordinate before the on-site evaluation begins to review questionnaire responses, identify areas requiring further investigation, discuss concerns, coordinate the interview process, and assign responsibilities during the on-site visit.

**706. On-Site Activities for the Readiness Evaluation**

1. The evaluation team will meet on-site for a period defined by NERC to conduct the readiness evaluation according to the agenda provided in advance. The team will conduct interviews with personnel, review documentation, and make observations about the entity's tools, facilities, and processes.
2. The team's findings shall be based on data collected from the entity's questionnaire and documentation, neighboring operating entities' questionnaires, and observations and information collected during the on-site visit.
3. Evidence of possible noncompliance with a reliability standard shall be reported to NERC and to the applicable regional entity for resolution through the applicable Compliance Monitoring and Enforcement Program. If the issue is judged to be an immediate threat to reliability, the notification to NERC and the regional entity shall be made within 24 hours of discovery. Possible noncompliance with a NERC reliability standard will not be identified in the readiness evaluation report.
4. Upon completion of the on-site evaluation, the team shall make a presentation to the evaluated entity of preliminary findings and recommendations that will be included in the final report.

**707. Preparation and Posting of the Final Report**

1. The evaluation team leaders shall prepare a draft report. The report will be sent to the team for review, within a period of time after the evaluation specified by NERC.
2. The evaluation team shall have a period of time specified by NERC to respond to the draft report. If a team member does not respond within the allotted time, such non-response shall be considered agreement with the contents of the report.
3. The draft report shall then be sent to the evaluated entity for its review to ensure that there are no factual errors in the report. The entity shall respond within a period of time specified by NERC. If the entity does not respond within the specified time, such non-response shall be considered agreement with the content of the report. The entity may provide feedback in the form of corrections and clarifications that will be considered by the evaluation team for inclusion in the final report.
4. After agreeing on any final corrections, the evaluation team may elect to provide the evaluated entity the opportunity to review the changes if deemed significant. The team shall then post the final report on the NERC Web site within a period of time from the on-site evaluation specified by NERC. Information deemed to be confidential information shall be redacted prior to posting. The entity will make the determination about what information will be redacted.
5. Should the entity wish to provide comments regarding the final report, evaluation processes, or findings, the entity may provide a statement in writing that will be posted on the NERC Web site in conjunction with the final report.
6. In response to the posted evaluation report and within a period of time after the posting specified by NERC, the entity shall provide a response plan to NERC addressing the report recommendations, including a timeline for implementation. The response plan shall be published on the NERC Web site when submitted by the entity. If the entity requests, NERC will offer assistance in developing a suitable response plan to address the report's recommendations. The entity shall notify NERC of its request for assistance.
7. NERC may direct that a mid-cycle follow-up evaluation be scheduled

**708. Monitoring Recommendation Implementation**

1. Evaluated entities may implement actions based on the recommendation or may review the recommendation and determine that no action is warranted or necessary and provide documentation on their decisions as well as the response plan.
2. NERC shall monitor the evaluated entity's implementation of the recommendations in the final report and the entity's response plan, and shall

report progress to the board. NERC may elect to use the regional entities to coordinate the request for updated recommendation status for members within its area of oversight.

**709. Examples of Excellence**

NERC shall identify and publish examples of excellence identified during the course of readiness evaluations. “Examples of excellence” are practices utilized by owners, operators and users of the bulk power system that are identified as being exceptionally effective in ensuring and protecting the reliability of the bulk power system. These “examples of excellence” may be identified through a readiness evaluation or submitted to NERC for an on-site evaluation.

**710. Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members**

1. All information made available or created during the course of the evaluation including, but not limited to, data, documents, observations and notes, shall be maintained as confidential by all evaluation team members, in accordance with the requirements of Section 1500.
2. Evaluation team members are obligated to destroy all confidential evaluation notes following the posting of the final report.
3. NERC will retain evaluation-related documentation, notes, and materials for a period of time as defined by NERC.

**711. Independent Audit of the Reliability Readiness Evaluation and Improvement Program**

1. NERC shall provide for an independent audit of its reliability readiness evaluation and improvement program at least once every three years or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC reliability readiness evaluation and improvement program in achieving its mission.
3. If the audit report includes recommendations to improve the reliability readiness evaluation and improvement program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.
4. The final report shall be posted by NERC for public viewing on its Web site. Confidential information shall be redacted according to NERC procedures and not released publicly.

**712. Formation of Sector Forum**

1. NERC will form a sector forum at the request of any five members of NERC that share a common interest in the safety and reliability of the bulk power system.

The members of sector forum may invite such others of the members of NERC to join the sector forum as the sector forum deems appropriate.

2. The request to form a sector forum must include a proposed charter for the sector forum. The board must approve the charter.
3. NERC will provide notification of the formation of a sector forum to its membership roster. Notices and agendas of meetings shall be posted on NERC's Web site.
4. A sector forum may make recommendations to any of the NERC committees and may submit a standards authorization request to the NERC *Reliability Standards Development Procedure*.

## **SECTION 800 — RELIABILITY ASSESSMENT AND PERFORMANCE ANALYSIS**

### **801. Objectives of the Reliability Assessment and Performance Analysis Program**

The objectives of the NERC reliability assessment and performance analysis program are to: (1) conduct, and report the results of, an independent assessment of the overall reliability and adequacy of the interconnected North American bulk power systems, both as existing and as planned; (2) analyze off-normal events on the bulk power system; (3) identify the root causes of events that may be precursors of potentially more serious events; (4) assess past reliability performance for lessons learned; (5) disseminate findings and lessons learned to the electric industry to improve reliability performance; and (6) develop reliability performance benchmarks. The final reliability assessment reports shall be approved by the board for publication to the electric industry and the general public.

### **802. Scope of the Reliability Assessment Program**

1. The scope of the reliability assessment program shall include:
  - 1.1 Review, assess, and report on the overall electric generation and transmission reliability (adequacy and operating reliability) of the interconnected bulk power systems, both existing and as planned.
  - 1.2 Assess and report on the key issues, risks, and uncertainties that affect or have the potential to affect the reliability of existing and future electric supply and transmission.
  - 1.3 Review, analyze, and report on regional self-assessments of electric supply and bulk power transmission reliability, including reliability issues of specific regional concern.
  - 1.4 Identify, analyze, and project trends in electric customer demand, supply, and transmission and their impacts on bulk power system reliability.
  - 1.5 Investigate, assess, and report on the potential impacts of new and evolving electricity market practices, new or proposed regulatory procedures, and new or proposed legislation (e.g. environmental requirements) on the adequacy and operating reliability of the bulk power systems.
2. The reliability assessment program shall be performed in a manner consistent with the reliability standards of NERC including but not limited to those that specify reliability assessment requirements.

### **803. Reliability Assessment Reports**

The number and type of periodic assessments that are to be conducted shall be at the discretion of NERC. The results of the reliability assessments shall be documented in three reports: the long-term and the annual seasonal (summer) and the annual seasonal (winter) assessment reports. NERC shall also conduct special reliability assessments from time to time as circumstances warrant. The reliability assessment reports shall be reviewed and approved for publication by the board. The three regular reports are described below.

1. **Long-Term Reliability Assessment Report** — The annual long-term report shall cover a ten-year planning horizon. The planning horizon of the long-term reliability assessment report shall be subject to change at the discretion of NERC. Detailed generation and transmission adequacy assessments shall be conducted for the first five years of the review period. For the second five years of the review period, the assessment shall focus on the identification, analysis, and projection of trends in peak demand, electric supply, and transmission adequacy, as well as other industry trends and developments that may impact future electric system reliability. Reliability issues of concern and their potential impacts shall be presented along with any mitigation plans or alternatives. The long-term reliability assessment reports will generally be published in the fall (September) of each year. NERC will also publish electricity supply and demand data associated with the long-term reliability assessment report.
2. **Summer Assessment Report** — The annual summer seasonal assessment report typically shall cover the four-month (June–September) summer period. It shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected summer peak demands. It shall also identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may include possible mitigation alternatives. The report will generally be published in mid-May for the upcoming summer period.
3. **Winter Assessment Report** — The annual winter seasonal assessment report shall cover the three-month (December–February) winter period. The report shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected winter peak demands. Similar to the summer assessment, the winter assessment shall identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may also include possible mitigation alternatives. The winter assessment report will generally be published in mid-November for the upcoming winter period.
4. **Special Reliability Assessment Reports** — In addition to the long-term and seasonal reliability assessment reports, NERC shall also conduct special reliability assessments on a regional, interregional, and interconnection basis as conditions warrant, or as requested by the board or applicable governmental authorities. The teams of reliability and technical experts also may initiate special assessments of

key reliability issues and their impacts on the reliability of a regions, subregions, or interconnection (or a portion thereof). Such special reliability assessments may include, among other things, operational reliability assessments, evaluations of emergency response preparedness, adequacy of fuel supply, hydro conditions, reliability impacts of new or proposed environmental rules and regulations, and reliability impacts of new or proposed legislation that affects or has the potential to affect the reliability of the interconnected bulk power systems in North America.

#### **804. Reliability Assessment Data and Information Requirements**

To carry out the reviews and assessments of the overall reliability of the interconnected bulk power systems, the regional entities and other entities shall provide sufficient data and other information requested by NERC in support of the annual long-term and seasonal assessments and any special reliability assessments.

Some of the data provided for these reviews and assessment may be considered confidential from a competitive marketing perspective, a critical energy infrastructure information perspective, or for other purposes. Such data shall be treated in accordance with the provisions of Section 1500 – Confidential Information.

While the major sources of data and information for this program are the regional entities, a team of reliability and technical experts is responsible for developing and formulating its own independent conclusions about the near-term and long-term reliability of the bulk power systems.

In connection with the reliability assessment reports, requests shall be submitted to each of the regional entities for required reliability assessment data and other information, and for each region's self-assessment report. The timing of the requests will be governed by the schedule for the preparation of the assessment reports.

The regional self-assessments are to be conducted in compliance with NERC standards and the respective regional planning criteria. The team(s) of reliability and technical experts shall also conduct interviews with the regional entities as needed. The summary of the regional self-assessments that are to be included in the assessment reports shall follow the general outline identified in NERC's request. This outline may change from time to time as key reliability issues change.

In general, the regional reliability self-assessments shall address, among other areas, the following topics: demand and net energy for load; assessment of projected resource adequacy; any transmission constraints that may impact bulk transmission adequacy and plans to alleviate those constraints; any unusual operating conditions that could impact reliability for the assessment period; fuel supply adequacy; the deliverability of generation (both internal and external) to load; and any other reliability issues in the region and their potential impacts on the reliability of the bulk power systems.



### **805. Reliability Assessment Process**

Based on their expertise, the review of the collected data, the review of the regional self-assessment reports, and interviews with the regional entities, as appropriate, the teams of reliability and technical experts shall perform an independent review and assessment of the generation and transmission adequacy of each region's existing and planned bulk power system. The results of the review teams shall form the basis of NERC's long-term and seasonal reliability assessment reports. The review and assessment process is briefly summarized below.

1. **Resource Adequacy Assessment** — The teams shall evaluate the regional demand and resource capacity data for completeness in the context of the overall resource capacity needs of the region. The team shall independently evaluate the ability of the regional entity members to serve their obligations given the demand growth projections, the amount of existing and planned capacity, including committed and uncommitted capacity, contracted capacity, or capacity outside of the region. If the region relies on capacity from outside of the region to meet its resource objectives, the ability to deliver that capacity shall be factored into the assessment. The demand and resource capacity information shall be compared to the resource adequacy requirements of the regional entity for the year(s) or season(s) being assessed. The assessment shall determine if the resource information submitted represents a reasonable and attainable plan for the regional entity and its members. For cases of inadequate capacity or reserve margin, the regional entity will be requested to analyze and explain any resource capacity inadequacies and its plans to mitigate the reliability impact of the potential inadequacies. The analysis may be expanded to include surrounding areas. If the expanded analysis indicates further inadequacies, then an interregional problem may exist and will be explored with the applicable regions. The results of these analyses shall be described in the assessment report.
2. **Transmission Adequacy and Operating Reliability Assessment** — The teams shall evaluate transmission system information that relates to the adequacy and operating reliability of the regional transmission system. That information shall include: regional planning study reports, interregional planning study reports, and/or regional operational study reports. If additional information is required, another data request shall be sent to the regional entity. The assessment shall provide a judgment on the ability of the regional transmission system to operate reliably under the expected range of operating conditions over the assessment period as required by NERC reliability standards. If sub-areas of the regional system are especially critical to the reliable operation of the regional bulk transmission system, these facilities or sub-areas shall be reviewed and addressed in the assessment. Any areas of concern related to the adequacy or operating reliability of the system shall be identified and reported in the assessment.
3. **Seasonal Operating Reliability Assessment** — The team(s) shall evaluate the overall operating reliability of the regional bulk transmission systems. In areas with potential resource adequacy or system operating reliability problems, operational readiness of the affected regional entities for the upcoming season

shall be reviewed and analyzed. The assessment may consider unusual but possible operating scenarios and how the system is expected to perform. Operating reliability shall take into account a wide range of activities, all of which should reinforce the regional entity's ability to deal with the situations that might occur during the upcoming season. Typical activities in the assessment may include: facility modifications and additions, new or modified operating procedures, emergency procedures enhancement, and planning and operating studies. The teams shall report the overall seasonal operating reliability of the regional transmission systems in the annual summer and winter assessment reports.

4. **Reporting of Reliability Assessment Results** — The teams of reliability and technical experts shall provide an independent assessment of the reliability of the regional entities and the North American interconnected bulk power system for the period of the assessment. While the regional entities are relied upon to provide the information to perform such assessments, the review team is not required to accept the conclusions provided by the regional entities. Instead, the review team is expected, based on their expertise, to reach their own independent conclusions about the status of the adequacy of the generation and bulk power transmission systems of North America.

The review team also shall strive to achieve consensus in their assessments. The assessments that are made are based on the best information available at the time. However, since judgment is applied to this information, legitimate differences of opinion can develop. Despite these differences, the review team shall work to achieve consensus on their findings.

In addition to providing long-term and seasonal assessments in connection with the reliability assessment program, the review team of experts shall also be responsible for recommending new and revised reliability standards related to the reliability assessments and the reliability of the bulk power systems. These proposals for new or revised standards shall be entered into NERC's Standards Development Process.

Upon completion of the assessment, the team shall share the results with the regional entities. The regional entities shall be given the opportunity to review and comment on the conclusions in the assessment and to provide additional information as appropriate. The reliability assessments and their conclusions are the responsibility of NERC's technical review team and NERC.

The preparation and approval of NERC's reliability assessment reports shall follow a prescribed schedule including review, comment, and possible approval by appropriate NERC committees. The long-term and seasonal (summer and winter) reliability assessment reports shall be further reviewed for approval by the board for publication to the electric industry.

**806. Scope of the Reliability Performance and Analysis Program**

The components of the program will include analysis of large-scale outages, disturbances, and near misses to determine root causes and lessons learned; identification and continuous monitoring of performance indices to detect emerging trends and signs of a decline in reliability performance; and communications of performance results, trends, recommendations, and initiatives to those responsible to take actions; followed with confirmation of actions to correct any deficiencies identified. Within NERC, the reliability performance program will provide performance results to the standards development, compliance enforcement, and reliability readiness programs to make the necessary adjustments to preserve reliability based on a risk-based approach. Recommendations that result from this program are reviewed as part of the NERC readiness evaluation and improvement program.

**807. Analysis of Major Events**

Responding to major blackouts and other system disturbances or emergencies can be divided into four phases: situational assessment and communications; situation tracking and communications; data collection, investigation, analysis, and reporting; and follow-up on recommendations.

- a. NERC's role following a blackout or other major bulk power system disturbance or emergency is to provide leadership, coordination, technical expertise, and assistance to the industry in responding to the event. Working closely with the regional entities and reliability coordinators, NERC will coordinate and facilitate efforts among industry participants, and with state, federal, and provincial governments in the United States and Canada to support the industry's response.
- b. When responding to any event where physical or cyber security is suspected as a cause or contributing factor to an event, NERC will immediately notify appropriate government agencies and coordinate its activities with them.
- c. During the conduct of some NERC analyses, assistance may be needed from government agencies. This assistance could include: authority to require data reporting from affected or involved parties; communications with other agencies of government; investigations related to possible criminal or terrorist involvement in the event; resources for initial data gathering immediately after the event; authority to call meetings of affected or involved parties; and technical and analytical resources for studies.
- d. NERC shall work with other participants to establish a clear delineation of roles, responsibilities, and coordination requirements among industry and government for the investigation and reporting of findings, conclusions, and recommendations related to major blackouts, disturbances, or other emergencies affecting the bulk power system with the objective of avoiding, to the extent possible, multiple investigations of the same event. If the event is confined to a single regional entity, NERC representatives will participate as members of the regional entity analysis team.

- e. NERC and applicable entity(s) shall apply the NERC *Blackout and Disturbance Response Procedures*, which are incorporated into these rules as **Appendix 8**. These procedures provide a framework to guide NERC's response to events that may have multiregional, national, or international implications. Experienced industry leadership shall be applied to tailor the response to the specific circumstances of the event. In accordance with that procedure, the NERC president will determine whether the event warrants analysis at the NERC-level. A regional entity may request that NERC elevate any analysis to a NERC level.
- f. NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry in accordance with section 810.

**808. Analysis of Off-Normal Events, Potential System Vulnerabilities, and System Performance**

- 1. NERC shall analyze system and equipment performance events that do not rise to the level of a major blackout, disturbance, or system emergency, as described in section 807. NERC shall also analyze potential vulnerabilities in the bulk power system brought to its attention by government agencies. The purpose of these analyses is to identify the root causes of events that may be precursors of potentially more serious events or that have the potential to cause more serious events, to assess past reliability performance for lessons learned, and to develop reliability performance benchmarks and trends.
- 2. NERC will screen and analyze events and potential vulnerabilities for significance, and information from those with generic applicability will be disseminated to the industry in accordance with section 810.

**809. Reliability Benchmarking**

NERC shall identify and track key reliability indicators as a means of benchmarking reliability performance and measuring reliability improvements. This program will include assessing available metrics, developing guidelines for acceptable metrics, maintaining a performance metrics "dashboard" on the NERC Web site, and developing appropriate reliability performance benchmarks.

**810. Information Exchange and Issuance of NERC Advisories, Recommendations and Essential Actions**

- 1. Members of NERC and bulk power system owners, operators, and users shall provide NERC with detailed and timely operating experience information and data.
- 2. In the normal course of operations, NERC disseminates the results of its events analysis findings, lessons learned and other analysis and information gathering to the industry. These findings, lessons learned and other information will be

reviewed as part of the readiness evaluation and improvement program and also be used to guide the reliability assessment program.

3. When NERC determines it is necessary to place the industry or segments of the industry on formal notice of its findings, analyses, and recommendations, NERC will provide such notification in the form of specific operations or equipment Advisories, Recommendations or Essential Actions:
  - 3.1 Level 1 (Advisories) – purely informational, intended to advise certain segments of the owners, operators and users of the bulk power system of findings and lessons learned;
  - 3.2 Level 2 (Recommendations) – specific actions that NERC is recommending be considered on a particular topic by certain segments of owners, operators, and users of the bulk power system according to each entity’s facts and circumstances;
  - 3.3 Level 3 (Essential Actions) – specific actions that NERC has determined are essential for certain segments of owners, operators, or users of the bulk power system to take to ensure the reliability of the bulk power system. Such Essential Actions require NERC board approval before issuance.
4. The bulk power system owners, operators, and users to which Level 2 (Recommendations) and Level 3 (Essential Actions) notifications apply are to evaluate and take appropriate action on such issuances by NERC. Such bulk power system owners, operators, and users shall also provide reports of actions taken and timely updates on progress towards resolving the issues raised in the Recommendations and Essential Actions in accordance with the reporting date(s) specified by NERC.
5. NERC will advise the Commission and other applicable governmental authorities of its intent to issue all Level 1 Advisories, Level 2 Recommendations, and Level 3 Essential Actions at least five (5) business days prior to issuance, unless extraordinary circumstances exist that warrant issuance less than five (5) business days after such advice. NERC will file a report with the Commission and other applicable governmental authorities no later than thirty (30) days following the date by which NERC has requested the bulk power system owners, operators, and users to which a Level 2 Recommendation or Level 3 Essential Action issuance applies to provide reports of actions taken in response to the notification. NERC’s report to the Commission and other applicable governmental authorities will describe the actions taken by the relevant owners, operators, and users of the bulk power system and the success of such actions taken in correcting any vulnerability or deficiency that was the subject of the notification, with appropriate protection for confidential or critical infrastructure information.

**811. Equipment Performance Data**

Through its Generating Availability Data System (GADS), NERC shall collect operating information about the performance of electric generating equipment; provide assistance to those researching information on power plant outages stored in its database; and support equipment reliability as well as availability analyses and other decision-making processes developed by GADS subscribers. GADS data is also used in conducting assessments of generation resource adequacy.

## **SECTION 900 — TRAINING AND EDUCATION**

### **901. Scope of the Training and Education Program**

Maintaining the reliability of the bulk electric system through implementation of the Reliability Standards requires informed and trained personnel. The training and education program will provide the education and training necessary for bulk power system personnel and regulators to obtain the essential knowledge necessary to understand and operate the bulk electric system.

NERC shall develop and maintain training and education programs for the purpose of establishing training requirements, developing materials, and developing training activities. The target audience of the training and education programs shall be bulk power system operating personnel including system operations personnel, operations support personnel (engineering and information technology), supervisors and managers, training personnel, and other personnel directly responsible for complying with NERC reliability standards who, through their actions or inactions, may impact the real-time, or day-ahead reliability of the bulk power system.

NERC shall also develop and provide appropriate training and education for industry participants and regulators affected by new or changed reliability standards or compliance requirements.

To accomplish those objectives:

1. NERC shall periodically conduct job task analyses for targeted bulk power system personnel to ensure that the training program content is properly aligned to the job tasks performed by those personnel.
2. NERC shall develop and maintain personnel training program curriculum requirements based on valid job-task analysis.
3. NERC shall periodically conduct performance surveys to determine the effectiveness of the training program and identify areas for further training development and improvement.
4. NERC shall develop training and education materials and activities to assist bulk power system entities implementing new or revised reliability standard requirements or other NERC-related changes.
5. NERC shall develop and provide training to people who participate in NERC and regional entity evaluations, audits, and investigations for the compliance enforcement program, organization certification program, reliability readiness evaluation program, and the continuing education program.

### **902. Continuing Education Program**

NERC shall develop and maintain a continuing education program to foster the improvement of training and to promote quality in the training programs used by and

implemented by bulk power system entities. The program shall approve or accredit those activities and entities meeting NERC continuing education requirements.

1. NERC shall develop and implement continuing education program requirements that promote excellence in training programs and advance improved performance for bulk system personnel identified in Section 901.
2. NERC shall develop and maintain a process to approve or accredit continuing education providers and activities seeking approval or accreditation and meeting NERC-approved continuing education requirements.
3. NERC shall perform periodic audits on continuing education providers and training activities to ensure that the approved or accredited providers and training activities satisfy NERC continuing education requirements.
4. NERC shall develop and maintain an appeals process for disputed application reviews, interpretations of guidelines and standards, probation or suspension of NERC-approved provider status, or continuing education hour disputes.



## **SECTION 1000 — SITUATION AWARENESS AND INFRASTRUCTURE SECURITY**

### **1001. Situation Awareness**

NERC shall through the use of reliability coordinators and available tools, monitor present conditions on the bulk power system and provide leadership coordination, technical expertise, and assistance to the industry in responding to events as necessary. To accomplish these goals, NERC will:

1. Maintain real-time situation awareness of conditions on the bulk power system;
2. Notify the industry of significant bulk power system events that have occurred in one area, and which have the potential to impact reliability in other areas;
3. Maintain and strengthen high-level communication, coordination, and cooperation with governments and government agencies regarding real-time conditions; and
4. Enable the reliable operation of interconnected bulk power systems by facilitating information exchange and coordination among reliability service organizations.

### **1002. Reliability Support Services**

NERC will provide tools and other support services for the benefit of reliability coordinators and other system operators, including the Area Control Error (ACE) and Frequency Monitoring System, NERC Hotline, Real-time Flows, System Data Exchange (SDX), Reliability Coordinator Information System (RCIS), Transmission Services Information Network (TSIN), Interchange Distribution Calculator (IDC), Interregional Security Network (ISN), and Central Repository for Security Events (CRC). To accomplish this goal, NERC will:

1. Maintain the reliability and effectiveness of all mission-critical operating reliability support systems and services;
2. Continue to support maintenance of a transmission provider curtailment report on the CRC site in response to Federal Energy Regulatory Commission Order 605;
3. Investigate and analyze the use of high-speed real-time system measurements, including phasors, in predicting the behavior and performance of the Eastern Interconnection; and
4. Facilitate real-time voice and data exchange services among reliability coordinators (e.g., Hotline, Interregional Security Network, NERCnet, System Data Exchange, etc.).

### **1003. Infrastructure Security Program**

NERC shall coordinate electric industry activities to promote critical infrastructure protection of the bulk power system in North America by taking a leadership role in critical infrastructure protection of the electricity sector so as to reduce vulnerability and

improve mitigation and protection of the electricity sector's critical infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. Electric Sector Information Sharing and Analysis Center (ESISAC)
  - 1.1 NERC shall serve as the electricity sector's Sector Coordinator and operate its Information Sharing and Analysis Center to gather information and communicate security-related threats and incidents within the sector, with United States and Canadian government agencies, and with other critical infrastructure sectors.
  - 1.2 NERC shall improve the capability of the ESISAC to analyze security threats and incident information and provide situational assessments for the electricity sector and governments.
  - 1.3 NERC shall work closely with the United States Department of Homeland Security, Department of Energy, Natural Resources Canada, and Public Safety and Emergency Preparedness Canada.
  - 1.4 NERC shall strengthen and expand these functions and working relationships with the electricity sector, other critical infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the bulk power system.
  - 1.5 NERC shall fill the role of the Electricity Sector Coordinating Council and coordinate with the Government Coordinating Council.
  - 1.6 NERC shall coordinate with other critical infrastructure sectors through active participation with the other Sector Coordinating Councils, the other ISACs, and the National Infrastructure Advisory Committee.
  - 1.7 NERC shall encourage and participate in coordinated critical infrastructure protection exercises, including interdependencies with other critical infrastructure sectors.
2. Security Planning
  - 2.1 NERC shall take a risk management approach to critical infrastructure protection, considering probability and severity, and recognizing that mitigation and recovery can be practical alternatives to prevention.
  - 2.2 NERC shall keep abreast of the changing threat environment through collaboration with government agencies.
  - 2.3 NERC shall develop criteria to identify critical physical and cyber assets, assess security threats, identify risk assessment methodologies, and assess effectiveness of physical and cyber protection measures.

- 2.4 NERC shall enhance and maintain the bulk power system critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical bulk power system equipment.
- 2.5 NERC shall support implementation of the Cyber Security Standard through education and outreach.
- 2.6 NERC shall review and improve existing Security Guidelines, develop new Security Guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into standards.
- 2.7 NERC shall conduct education and outreach initiatives to increase awareness and respond to the needs of the electricity sector.
- 2.8 NERC shall strengthen relationships with federal, state, and provincial government agencies on critical infrastructure protection matters.
- 2.9 NERC shall maintain and improve mechanisms for the sharing of sensitive or classified information with federal, state, and provincial government agencies on critical infrastructure protection matters; work with DOE and DHS to implement the National Infrastructure Protection Plan, as applicable to the electricity sector; and coordinate this work with PSEPC.
- 2.10 NERC shall improve methods to better assess the impact of a possible physical attack on the bulk power system and means to deter, mitigate, and respond following an attack.
- 2.11 NERC shall assess the results of vulnerability assessments and enhance the security of System Control and Data Acquisition (SCADA) and process control systems by developing methods to detect an emerging cyber attack and the means to mitigate impacts on the bulk power systems.
- 2.12 NERC shall work with the National SCADA Test Bed and the Process Control Systems Forum to accelerate the development of technology that will enhance the security, safety, and reliability of process control and SCADA systems.

## **SECTION 1100 — ANNUAL NERC BUSINESS PLANS AND BUDGETS**

### **1101. Scope of Business Plans and Budgets**

The board shall determine the content of the budgets to be submitted to the applicable ERO governmental authorities with consultation from the members of the Members Representatives Committee, regional entities, and others in accordance with the bylaws. The board shall identify any activities outside the scope of NERC's statutory reliability functions, if any, and the appropriate funding mechanisms for those activities.

### **1102. NERC Funding and Cost Allocation**

1. In order that NERC's costs shall be fairly allocated among interconnections and among regional entities, the NERC funding mechanism for all statutory functions shall be based on net energy for load (NEL).
2. NERC's costs shall be allocated so that all load (or, in the case of costs for an interconnection or regional entity, all load within that interconnection or regional entity) bears an equitable share of such costs based on NEL.
3. Costs shall be equitably allocated between countries or regional entities thereof for which NERC has been designated or recognized as the electric reliability authority.
4. Costs incurred to accomplish the statutory functions for one interconnection, regional entity, or group of entities will be directly assigned to that interconnection, regional entity, or group of entities provided that such costs are allocated equitably to end-users based on net energy for load.

### **1103. NERC Budget Development**

1. The NERC annual budget process shall be initiated in March of each calendar year thereby allowing a sufficient amount of time for NERC to receive member inputs, develop the budget, and receive board and, where authorized by applicable legislation or agreement, ERO governmental authority approval of the NERC budget for the following fiscal year.
2. The NERC budget submittal to ERO governmental authorities shall include provisions for all ERO functions, all regional entity delegated functions as specified in delegation agreements and reasonable reserves and contingencies.
3. The NERC annual budget submittal to ERO governmental authorities shall include the following information: (1) budget component justification based on statutory or other authorities; (2) how the budgeted activity lends itself to the accomplishment of the statutory or other authorities; (3) methods of calculating budget estimates; (4) who prioritizes competing needs; (5) how the budget meets the objectives of affordability, sustainability, and efficiency and effectiveness of

expenditures; (6) implementation to meet international standards; (7) transparency; and (8) accountability and execution in accordance with operating plan, performance measures, and shifting priorities.

4. NERC shall develop, in consultation with the regional entities, a reasonable and consistent system of accounts, to allow a meaningful comparison of actual results at the NERC and regional entity level by the applicable ERO governmental authorities.

**1104. Submittal of Regional Entity Budgets to NERC**

1. Each regional entity shall submit its annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC no later than June 1 of the prior year, together with supporting materials including the regional entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees, and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures.
2. NERC shall review and approve each regional entity's budget for meeting the requirements of its delegated authority. Concurrent with approving the NERC budget, NERC shall review and approve, or reject, each regional entity budget for filing.
3. NERC shall also have the right to review from time to time, in reasonable intervals but no less frequently than every three years, the financial books and records of each regional entity having delegated authority in order to ensure that the documentation fairly represents in all material respects appropriate funding of delegated functions.

**1105. Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval**

1. NERC shall file for approval by the applicable ERO governmental authorities at least 130 days in advance of the start of each fiscal year. The filing shall include: (1) the complete NERC and regional entity budgets including the business plans and organizational charts approved by the board, (2) NERC's annual funding requirement (including regional entity costs for delegated functions), (3) the previous year's audited financial statements, and (4) the mechanism for assessing charges to recover that annual funding requirement, together with supporting materials in sufficient detail to support the requested funding requirement.
2. NERC shall seek approval from each governmental authority requiring such approval for the funding requirements necessary to perform ERO activities within their jurisdictions.

**1106. NERC and Regional Entity Billing and Collections**

1. NERC shall request the regional entities to identify all load-serving entities<sup>3</sup> within each regional entity and the NEL assigned to each load-serving entity, and the regional entities shall supply the requested information. The assignment of a funding requirement to an entity shall not be the basis for determining that the entity must be registered in the compliance registry.
2. NERC shall accumulate the NEL by load-serving entities for each ERO governmental authority and submit the proportional share of NERC funding requirements to each ERO governmental authority for approval together with supporting materials in sufficient detail to support the requested funding requirement.
3. NEL reported by balancing authorities within a region shall be used to rationalize and validate amounts allocated for collection through regional entity processes.
4. The billing and collection processes shall provide:
  - 4.1 A clear validation of billing and application of payments.
  - 4.2 A minimum of data requests to those being billed.
  - 4.3 Adequate controls to ensure integrity in the billing determinants including identification of entities responsible for funding NERC's activities.
  - 4.4 Consistent billing and collection terms.
5. NERC will bill and collect all budget requirements approved by applicable ERO governmental authorities (including the funds required to support those functions assigned to the regional entities through the delegation agreements) directly from the load-serving entities or their designees or as directed by particular ERO governmental authorities, except where the regional entity is required to collect the budget requirements for NERC, in which case the regional entity will collect directly from the load-serving entities or as otherwise provided by agreement and submit funds to NERC. Alternatively, a load-serving entity may pay its allocated ERO costs through a regional entity managed collection mechanism.
6. NERC shall set a minimum threshold limit on the billing of small LSEs to minimize the administrative burden of collection.
7. NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

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<sup>3</sup> A regional entity shall allocate funding obligations using a NERC-approved alternative method, as stated in the regional delegation agreement.

8. In the case where a Regional Entity performs the collection for ERO, the Regional Entity will not be responsible for non-payment in the event that a user, owner or operator of the Bulk Power System does not pay its share of dues, fees and charges in a timely manner, provided that such a Regional Entity shall use reasonably diligent efforts to collect dues, fees, and other charges from all entities obligated to pay them. However, any revenues not paid shall be recovered from others within the same region to avoid cross-subsidization between regions.
9. Both NERC and the regional entities also may bill members or others for functions and services not within statutory requirements or otherwise authorized by the appropriate governmental authorities. Costs and revenues associated with these functions and services shall be separately identified and not commingled with billings associated with the funding of NERC or of the regional entities for delegated activities.

**1107. Penalty Applications**

1. Where NERC or a regional entity initiates an investigation that leads to imposition of a penalty, the entity that initiated the investigation shall receive any penalty monies imposed and collected as a result of that investigation.
2. All funds from financial penalties assessed in the United States received by the entity initiating the investigation shall be applied as a general offset to the entity's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Funds from financial penalties assessed against a Canadian entity shall be applied as specified by legislation or agreement.
3. In the event that an investigation is performed jointly by NERC and a regional entity, the regional entity shall receive the penalty monies and offset the entity's budget requirements for the subsequent fiscal year.
4. Exceptions to the policy due to statutory or regulatory restrictions will be considered on a case-by-case basis.

**1108. Special Assessments**

On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next funding cycle, NERC shall file with the applicable ERO governmental authorities, where authorized by applicable legislation or agreement, for authorization to collect a special assessment for statutory functions. Such filing shall include supporting materials to justify the requested funding, including any departure from the approved funding formula or method.

## **SECTION 1200 — REGIONAL DELEGATION AGREEMENTS**

### **1201. Pro Forma Regional Delegation Agreement**

NERC shall develop and maintain a pro forma regional entity delegation agreement, which shall serve as the basis for negotiation of consistent agreements for the delegation of ERO functions to regional entities.

### **1202. Regional Entity Essential Requirements**

NERC shall establish the essential requirements for an entity to become qualified and maintain good standing as a regional entity.

### **1203. Negotiation of Regional Delegation Agreements**

NERC shall, for all areas of North America that have provided NERC with the appropriate authority, negotiate regional delegation agreements for the purpose of ensuring all areas of the North American bulk power systems are within a regional entity area. In the event NERC is unable to reach agreement with regional entities for all areas, NERC shall provide alternative means and resources for implementing NERC functions within those areas. No delegation agreement shall take effect until it has been approved by the appropriate ERO governmental authority.

### **1204. Conformance to Rules and Terms of Regional Delegation Agreements**

NERC and each regional entity shall comply with all applicable ERO rules of procedure and the obligations stated in the regional delegation agreement.

### **1205. Sub-delegation**

The regional entity shall not sub-delegate any responsibilities and authorities delegated to it by its regional delegation agreement with NERC.

### **1206. Nonconformance to Rules or Terms of Regional Delegation Agreement**

If a regional entity is unable to comply or is not in compliance with an ERO rule of procedure or the terms of the regional delegation agreement, the regional entity shall immediately notify NERC in writing, describing the area of nonconformance and the reason for not being able to conform to the rule. NERC shall evaluate each case and inform the affected regional entity of the results of the evaluation. If NERC determines that a rule or term of the regional delegation agreement has been violated by an entity or cannot practically be implemented by an entity, NERC shall notify the applicable ERO governmental authorities and take any actions necessary to address the situation.

### **1207. Regional Entity Audits**

Approximately every three years and more frequently if necessary for cause, NERC shall audit each regional entity to verify that the regional entity continues to comply with NERC rules of procedure and the obligations of NERC delegation agreement.



## **SECTION 1300 — COMMITTEES**

### **1301. Establishing Standing Committees**

The board may from time to time create standing committees. In doing so, the board shall approve the charter of each committee and assign specific authority to each committee necessary to conduct business within that charter. Each standing committee shall work within its board-approved charter and shall be accountable to the board for performance of its board-assigned responsibilities. A NERC standing committee may not delegate its assigned work to a member forum, but, in its deliberations, may request the opinions of and consider the recommendations of a member forum.

### **1302. Committee Membership**

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and can provide for balanced decision-making by providing for representatives from each sector or, where sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate net energy for load. All committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate. Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.

### **1303. Procedures for Appointing Committee Members**

Committee members shall be nominated and selected in a manner that is open, inclusive, and fair. Unless otherwise stated in these rules or approved by the board, all committee member appointments shall be approved by the board, and committee officers shall be appointed by the Chairman of the Board.

### **1304. Procedures for Conduct of Committee Business**

1. Notice to the public of the dates, places, and times of meetings of all committees, and all nonconfidential material provided to committee members, shall be posted

on the Corporation's Web site at approximately the same time that notice is given to committee members. Meetings of all standing committees shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to personnel matters, compliance enforcement matters, litigation, or commercially sensitive or critical infrastructure information of any entity.

2. NERC shall maintain a set of procedures, approved by the board, to guide the conduct of business by standing committees.

**1305. Committee Subgroups**

Standing committees may appoint subgroups using the same principles as in Section 1302.

## **SECTION 1400 — AMENDMENTS TO THE NERC RULES OF PROCEDURE**

### **1401. Proposals for Amendment or Repeal of Rules of Procedure**

In accordance with the bylaws of NERC, requests to amend or repeal the rules of procedure may be submitted by (1) any ten members of NERC, which number shall include members from at least three membership segments, (2) the Member Representatives Committee, (3) a standing committee of NERC to whose function and purpose the rule pertains, or (4) an officer of the ERO.

### **1402. Approval of Amendment or Repeal of Rules of Procedure**

Amendment to or repeal of rules of procedure shall be approved by the board after public notice and opportunity for comment in accordance with the bylaws of NERC. In approving changes to the rules of procedure, the board shall consider the inputs of the Member Representatives Committee, other ERO committees affected by the particular changes to the rules, and other stakeholders as appropriate. After board approval, the amendment or repeal shall be submitted to the ERO governmental authorities for approval, where authorized by legislation or agreement. No amendment to or repeal of the rules of procedure shall be effective until it has been approved by the applicable ERO governmental authorities.

### **1403. Alternative Procedure for Violation Risk Factors**

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard after notice and opportunity for comment. In adopting violation risk factors, the board shall consider the inputs of the Member Representatives Committee and affected stakeholders.

## **SECTION 1500 — CONFIDENTIAL INFORMATION**

### **1501. Definitions**

1. **Confidential information** means (i) confidential business and market information; (ii) critical energy infrastructure information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) cybersecurity incident information; provided, that public information developed or acquired by an entity shall be excluded from this definition.
2. **Confidential business and market information** means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.
3. **Critical energy infrastructure information** means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.
4. **Critical infrastructure** means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.
5. **Cybersecurity incident information** means any information related to, describing, or which could be used to plan or cause a cybersecurity incident as defined in 18 C.F.R. § 39.1.

### **1502. Protection of Confidential Information**

1. **Identification of Confidential Information** — An owner, operator, or user of the bulk power system and any other party (the “submitting entity”) shall mark as confidential any information that it submits to NERC or a regional entity (the “receiving entity”) that it reasonably believes contains confidential information as defined by these rules, indicating the category or categories defined in Section 1501 in which the information falls. If the information is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the submitting entity shall so indicate and provide supporting references and details.

2. **Confidentiality** — Except as provided herein, a receiving entity shall keep in confidence and not copy, disclose, or distribute any confidential information or any part thereof without the permission of the submitting entity, except as otherwise legally required.
3. **Information no longer Confidential** – If a submitting entity concludes that information for which it had sought confidential treatment no longer qualifies for that treatment, the submitting entity shall promptly so notify NERC or the relevant regional entity.

### **1503. Requests for Information**

1. **Limitation** — A receiving entity shall make information available only to one with a demonstrated need for access to the information from the receiving entity.
2. **Form of Request** — A person with such a need may request access to information by using the following procedure:
  - 2.1 The request must be in writing and clearly marked “Request for Information.”
  - 2.2 The request must identify the individual or entity that will use the information, explain the requester’s need for access to the information, explain how the requester will use the information in furtherance of that need, and state whether the information is publicly available or available from another source or through another means. If the requester seeks access to information that is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the requester shall describe how it qualifies to receive such information.
  - 2.3 The request must stipulate that, if the requester does not seek public disclosure, the requester will maintain as confidential any information received for which a submitting party has made a claim of confidentiality in accordance with NERC’s rules. As a condition to gaining access to such information, a requester shall execute a non-disclosure agreement in a form approved by NERC’s board of trustees.
3. **Notice and Opportunity for Comment** — Prior to any decision to disclose information marked as confidential, the receiving entity shall provide written notice to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed. Failure to provide such comments or otherwise respond is not deemed waiver of the claim of confidentiality.

4. **Determination by ERO or Regional Entity** — Based on the information provided by the requester under Rule 1503.2, any comments provided by the submitting entity, and any other relevant available information, the chief executive officer or his or her designee of the receiving entity shall determine whether to disclose such information.
5. **Appeal** — A person whose request for information is denied in whole or part may appeal that determination to the President of NERC (or the President’s designee) within 30 days of the determination. Appeals filed pursuant to this Rule must be in writing, addressed to the President of NERC (or the President’s designee), and clearly marked “Appeal of Information Request Denial.”

NERC will provide written notice of such appeal to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed; provided that any such comments must be received within 30 days of the notice and any failure to provide such comments or otherwise respond is not deemed a waiver of the claim of confidentiality.

The President of NERC (or the President’s designee) will make a determination with respect to any appeal within 30 days. In unusual circumstances, this time limit may be extended by the President of NERC (or the President’s designee), who will send written notice to the requester setting forth the reasons for the extension and the date on which a determination on the appeal is expected.

6. **Disclosure of Information** — In the event the receiving entity, after following the procedures herein, determines to disclose information designated as confidential information, it shall provide the submitting entity no fewer than 21 days’ written notice prior to releasing the information in order to enable such submitting entity to (a) seek an appropriate protective order or other remedy, (b) consult with the receiving entity with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Rule. Should a receiving entity be required to disclose confidential information, or should the submitting entity waive objection to disclosure, the receiving entity shall furnish only that portion of the confidential information which the receiving entity’s counsel advises is legally required.
7. **Posting of Determinations on Requests for Disclosure of Confidential Information** — Upon making its determination on a request for disclosure of confidential information, NERC or the regional entity, as applicable, shall (i) notify the requester that the request for disclosure is granted or denied, (ii) publicly post any determination to deny the request to disclose confidential information, including in such posting an explanation of the reasons for the denial (but without in such explanation disclosing the confidential information), and (iii) publicly post any determination that information claimed by the submitting entity to be confidential information is not confidential information (but without in such

posting disclosing any information that has been determined to be confidential information).

#### **1504. Employees, Contractors and Agents**

A receiving entity shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom confidential information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

#### **1505. Provision of Information to FERC and Other Governmental Authorities**

1. **Request** — A request from FERC for reliability information with respect to owners, operators, and users of the bulk power system within the United States is authorized by Section 215 of the Federal Power Act. Other applicable ERO governmental authorities may have similar authorizing legislation that grants a right of access to such information. Unless otherwise directed by FERC or its staff or the other ERO governmental authority requesting the information, upon receiving such a request, a receiving entity shall provide contemporaneous notice to the applicable submitting entity. In its response to such a request, a receiving entity shall preserve any mark of confidentiality and shall notify FERC or other appropriate governmental authorities that the submitting entity has marked the information as confidential.
2. **Continued Confidentiality** — Each receiving entity shall continue to treat as confidential all confidential information that it has submitted to NERC or to FERC or another appropriate ERO governmental authority, until such time as FERC or the other appropriate ERO governmental authority authorizes disclosure of such information.

#### **1506. Permitted Disclosures**

1. **Confirmed Violations** — Nothing in this Section 1500 shall prohibit the disclosure of a violation at the point when the matter is filed with an appropriate governmental authority as a notice of penalty, the “violator” admits to the violation, or the alleged violator and NERC or the regional entity reach a settlement regarding the violation.
2. **Compliance Information** — NERC and the regional entities are authorized to exchange confidential information related to evaluations, audits, and investigations in furtherance of the compliance and enforcement program, on condition they continue to maintain the confidentiality of such information.

#### **1507. Remedies for Improper Disclosure**

Any person engaged in NERC or regional entity activity under section 215 of the Federal Power Act or the equivalent laws of other appropriate governmental authorities who improperly discloses information determined to be confidential may lose access to confidential information on a temporary or permanent basis and may be subject to

adverse personnel action, including suspension or termination. Nothing in Section 1500 precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.



## **SECTION 1600 — REQUESTS FOR DATA OR INFORMATION**

### **1601. Scope of a NERC or Regional Entity Request for Data or Information**

Within the United States, NERC and regional entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission’s regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and regional entities may request comparable data or information, using such authority as may exist pursuant to these rules and as may be granted by ERO governmental authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to requirements contained in any Reliability Standard to provide data or information; the requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

### **1602. Procedure for Authorizing a NERC Request for Data or Information**

1. NERC shall provide a proposed request for data or information or a proposed modification to a previously-authorized request, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission’s Office of Electric Reliability at least twenty-one (21) days prior to initially posting the request or modification for public comment. Submission of the proposed request or modification to the Office of Electric Reliability is for the information of the Commission. NERC is not required to receive any approval from the Commission prior to posting the proposed request or modification for public comment in accordance with paragraph 1602.2 or issuing the request or modification to reporting entities following approval by the Board of Trustees.
2. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
  - 2.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information (“reporting entities”); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., “confidential,” “critical energy infrastructure information,” “aggregating”

or “identity masking”); and (vi) an estimate of the relative burden imposed on the reporting entities to accommodate the data or information request.

- 2.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an estimate of the burden imposed on the reporting entities to accommodate the modified data or information request, and (iii) any other items from paragraph 1.1 that require updating as a result of the modifications.
3. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC’s evaluation of the comments and recommendations, to the Board of Trustees.
4. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
5. NERC may make minor changes to an authorized request for data or information without board approval. However, if a reporting entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require board approval before they are implemented.
6. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the ERO governmental authority.

### **1603. Owners, Operators, and Users to Comply**

Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information. In the event a reporting entity within the United States fails to comply with an authorized request for data or information under Section 1600, NERC may request the Commission to exercise its enforcement authority to require the reporting entity to comply with the request for data or information and for other appropriate enforcement action by the Commission. NERC will make any request for the Commission to enforce a request for data or information through a non-public submission to the Commission’s enforcement staff.

### **1604. Requests by Regional Entity for Data or Information**

1. A regional entity may request that NERC seek authorization for a request for data or information to be applicable within the footprint of the regional entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600.
2. A regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural

elements as are included in this Section 1600. Any such regional entity procedures or changes to such procedures shall be submitted to NERC for approval. Upon approving such procedures or changes thereto, NERC shall file the proposed procedures or proposed changes for approval by the Commission and any other ERO governmental authorities applicable to the regional entity. The regional entity procedures or changes to such procedures shall not be effective in a jurisdiction until approved by, and in accordance with any revisions directed by, the Commission or other ERO governmental authority.

### **1605. Confidentiality**

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as critical energy infrastructure information, then the applicable provisions of Section 1500 will apply without further action by a submitting entity. A submitting entity may designate any other data or information as confidential pursuant to the provisions of Section 1500, and NERC or the regional entity shall treat that data or information in accordance with Section 1500. NERC or a regional entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

### **1606. Expedited Procedures for Requesting Time-Sensitive Data or Information**

1. In the event NERC or a regional entity must obtain data or information by a date or within a time period that does not permit adherence to the time periods specified in Section 1602, the procedures specified in Section 1606 may be used to obtain the data or information. Without limiting the circumstances in which the procedures in Section 1606 may be used, such circumstances include situations in which it is necessary to obtain the data or information (in order to evaluate a threat to the reliability or security of the bulk-power system, or to comply with a directive in an order issued by the Commission or by another ERO governmental authority) within a shorter time period than possible under Section 1602. The procedures specified in Section 1606 may only be used if authorized by the NERC Board of Trustees prior to activation of such procedures.
2. Prior to posting a proposed request for data or information, or a modification to a previously-authorized request, for public comment under Section 1606, NERC shall provide the proposed request or modification, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability. The submission to the Commission's Office of Electric Reliability shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information. The submission shall be made to the Commission's Office of Electric Reliability as far in advance, up to twenty-one (21) days, of the posting of the proposed request or modification for public comments as is reasonably possible under the circumstances, but in no event less than two (2) days in advance of the public posting of the proposed request or modification.

3. NERC shall post the proposed request for data or information or proposed modification to a previously-authorized request for data or information for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five (5) days. The proposed request for data or information or proposed modification to a previously-authorized request for data or information shall include the information specified in paragraph 1602.2.1 or 1602.2.2, as applicable, and shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information.
4. The provisions of paragraphs 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable to a request for data or information or modification to a previously-authorized request for data or information developed and issued pursuant to Section 1606, except that (a) if NERC makes minor changes to an authorized request for data or information without board approval, such changes shall require board approval if a reporting entity objects to NERC in writing to such changes within five (5) days of issuance of the modified request; and (b) authorization of the request for data or information shall be final unless an affected party appeals the authorization of the request by the Board of Trustees to the ERO governmental authority within five (5) days following the decision of the Board of Trustees authorizing the request, which decision shall be promptly posted on NERC's web site.

**ATTACHMENT 2B:**

**REDLINED VERSION**

**(ALL REVISIONS ARE TO SECTION 400)**

Revised for December 19, 2008  
FERC Order

# Rules of Procedure

Effective: [Month, Day], ~~2008~~2009

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## **SECTION 100 — APPLICABILITY OF RULES OF PROCEDURE**

NERC and NERC members shall comply with these rules of procedure. Each regional entity shall comply with these rules of procedure as applicable to functions delegated to the regional entity by NERC or as required by an appropriate governmental authority or as otherwise provided.

Each bulk power system owner, operator, and user shall comply with all rules of procedure of NERC that are made applicable to such entities by approval pursuant to applicable legislation or regulation, or pursuant to agreement.

Any entity that is unable to comply or that is not in compliance with a NERC rule of procedure shall immediately notify NERC in writing, stating the rule of concern and the reason for not being able to comply with the rule.

NERC shall evaluate each case and inform the entity of the results of the evaluation. If NERC determines that a rule has been violated, or cannot practically be complied with, NERC shall notify the applicable governmental authorities and take such other actions as NERC deems appropriate to address the situation.

NERC shall comply with each approved reliability standard that identifies NERC or the electric reliability organization as a responsible entity. Regional Entities shall comply with each approved reliability standard that identifies Regional Entities as responsible entities. A violation by NERC or a Regional Entity of such a reliability standard shall constitute a violation of these Rules of Procedure.

## **SECTION 200 — DEFINITIONS OF TERMS**

### **201. General**

For purposes of NERC rules of procedure, the terms defined in Section 202 shall have the meaning set forth therein. Other terms are defined within particular sections of the rules of procedure. Other terms used but not defined in the rules of procedure shall be defined in NERC's Bylaws, the NERC Glossary of Terms Used in Reliability Standards adopted in conjunction with NERC's Reliability Standards, or in accordance with their commonly understood and used technical meanings in the electric power industry, including applicable codes and standards.

### **202. Specific Definitions**

“Board” means the Board of Trustees of NERC.

“Bulk power system” means facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative irrespective(s) of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

“Confirmed violation” is one for which an entity has: 1) accepted the finding of the violation by a regional entity or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

“Electric reliability organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the bulk power system in the United States. The organization may also have received recognition by applicable governmental authorities in Canada and Mexico to establish and enforce reliability standards for the bulk power systems of the respective countries.

“Entity variance” means an aspect of a reliability standard that applies only within a particular entity or a subset of entities within a limited portion of a regional entity, such as a variance that would apply to a regional transmission organization or particular market or to a subset of bulk power system owners, operators or users. An entity variance may not be inconsistent with or less stringent than the reliability standards as it would otherwise exist without the entity variance. An entity variance shall be approved only through the NERC standards development procedure and shall be made part of the NERC reliability standards.

“ERO governmental authority” is a government agency that has subject matter jurisdiction over the reliability of the bulk power system within its jurisdictional territory. In the United States, the ERO governmental authority is the Federal Energy Regulatory Commission. In Canada, the ERO governmental authority resides with applicable federal and provincial governments who may delegate duties and responsibilities to other entities. Use of the term is intended to be inclusive of all applicable authorities in the United States, Canada, and Mexico, and is not restricted to those listed here.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Reliable operation” means operating the elements of the bulk power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

“Regional criteria” means reliability requirements developed by a regional entity that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Such regional criteria may be necessary to account for physical differences in the bulk power system but are not inconsistent with reliability standards nor do they result in lesser reliability. Such regional criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional reliability standard” means a type of reliability standards that is applicable only within a particular regional entity or group of regional entities. A regional reliability standard may augment, add detail to, or implement another reliability standard or cover matters not addressed by other reliability standards. Regional reliability standards, upon adoption by NERC and approval by the applicable ERO governmental authority(ies), shall be reliability standards and shall be enforced within the applicable regional entity or regional entities pursuant to delegated authorities.

“Reliability standard” means a requirement to provide for reliable operation of the bulk power system, including without limiting the foregoing, requirements for the operation of existing bulk power system facilities, including cyber security protection, and including the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system, but the term does not include any requirement to enlarge bulk power system facilities or to construct new transmission capacity or generation capacity. A reliability standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the applicable governmental authority.

“Variance” means an aspect or element of a reliability standard that applies only within a particular regional entity or group of regional entities, or to a particular entity or class of entities. A variance allows an alternative approach to meeting the same reliability objective as the reliability standard, and is typically necessitated by a physical difference. A variance is embodied within a reliability standard and as such, if adopted by NERC and approved by the ERO governmental authority, shall be enforced within the applicable regional entity or regional entities pursuant to delegated authority.

## SECTION 300 — RELIABILITY STANDARDS DEVELOPMENT

### 301. General

NERC shall develop and maintain reliability standards that apply to bulk power system owners, operators, and users and that enable NERC and regional entities to measure the reliability performance of bulk power system owners, operators, and users; and to hold them accountable for reliable operation of the bulk power systems. The reliability standards shall be technically excellent, timely, just, reasonable, not unduly discriminatory or preferential, in the public interest, and consistent with other applicable standards of governmental authorities.

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

1. **Applicability** — Each reliability standard shall clearly identify the functional classes of entities responsible for complying with the reliability standard, with any specific additions or exceptions noted. Such functional classes<sup>1</sup> include: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, interchange authorities, transmission service providers, market operators, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Each reliability standard shall also identify the geographic applicability of the standard, such as the entire North American bulk power system, an interconnection, or within a regional entity area. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.
2. **Reliability Objectives** — Each reliability standard shall have a clear statement of purpose that shall describe how the standard contributes to the reliability of the bulk power system. The following general objectives for the bulk power system provide a foundation for determining the specific objective(s) of each reliability standard:
  - 2.1 **Reliability Planning and Operating Performance** — Bulk power systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions.
  - 2.2 **Frequency and Voltage Performance** — The frequency and voltage of bulk power systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
  - 2.3 **Reliability Information** — Information necessary for the planning and operation of reliable bulk power systems shall be made available to those entities responsible for planning and operating bulk power systems.

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<sup>1</sup> These functional classes of entities are derived from NERC's Reliability Functional Model. When a standard identifies a class of entities to which it applies, that class must be defined in the Glossary of Terms Used in Reliability Standards.

- 2.4 **Emergency Preparation** — Plans for emergency operation and system restoration of bulk power systems shall be developed, coordinated, maintained, and implemented.
- 2.5 **Communications and Control** — Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of bulk power systems.
- 2.6 **Personnel** — Personnel responsible for planning and operating bulk power systems shall be trained and qualified, and shall have the responsibility and authority to implement actions.
- 2.7 **Wide-area View** — The reliability of the bulk power systems shall be assessed, monitored, and maintained on a wide-area basis.
- 2.8 **Security** — Bulk power systems shall be protected from malicious physical or cyber attacks.
3. **Performance Requirement or Outcome** — Each reliability standard shall state one or more performance requirements, which if achieved by the applicable entities, will provide for a reliable bulk power system, consistent with good utility practices and the public interest. Each requirement is not a “lowest common denominator” compromise, but instead achieves an objective that is the best approach for bulk power system reliability, taking account of the costs and benefits of implementing the proposal.
4. **Measurability** — Each performance requirement shall be stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement shall have one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics shall be provided to determine satisfactory performance.
5. **Technical Basis in Engineering and Operations** — Each reliability standard shall be based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.
6. **Completeness** — Reliability standards shall be complete and self-contained. The standards shall not depend on external information to determine the required level of performance.
7. **Consequences for Noncompliance** — In combination with guidelines for penalties and sanctions, as well as other ERO and regional entity compliance documents, the consequences of violating a standard are clearly presented to the entities responsible for complying with the standards.
8. **Clear Language** — Each reliability standard shall be stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in

keeping with good utility practices, are able to arrive at a consistent interpretation of the required performance.

9. **Practicality** — Each reliability standard shall establish requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.
10. **Consistent Terminology** — To the extent possible, reliability standards shall use a set of standard terms and definitions that are approved through the NERC reliability standards development process.

### **303. Relationship between Reliability Standards and Competition**

To ensure reliability standards are developed with due consideration of impacts on competition, to ensure standards are not unduly discriminatory or preferential, and recognizing that reliability is an essential requirement of a robust North American economy, each reliability standard shall meet all of these market-related objectives:

1. **Competition** — A reliability standard shall not give any market participant an unfair competitive advantage.
2. **Market Structures** — A reliability standard shall neither mandate nor prohibit any specific market structure.
3. **Market Solutions** — A reliability standard shall not preclude market solutions to achieving compliance with that standard.
4. **Commercially Sensitive Information** — A reliability standard shall not require the public disclosure of commercially sensitive information or other confidential information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.
5. **Adequacy** — NERC shall not set standards defining an adequate amount of, or requiring expansion of, bulk power system resources or delivery capability.

### **304. Essential Principles for the Development of Reliability Standards**

NERC shall develop reliability standards in accordance with the NERC *Reliability Standards Development Procedure*, which is incorporated into these rules as **Appendix 3A**. Appeals in connection with the development of a reliability standard shall also be conducted in accordance with the NERC *Reliability Standards Development Procedure*. Any amendments or revisions to the *Reliability Standards Development Procedure* shall be consistent with the following essential principles:

1. **Openness** — Participation shall be open to all persons who are directly and materially affected by the reliability of the North American bulk power system. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in NERC or any other organization, and shall



not be unreasonably restricted on the basis of technical qualifications or other such requirements.

2. **Transparency** — The process shall be transparent to the public.
3. **Consensus-building** — The process shall build and document consensus for each standard, both with regard to the need and justification for the standard and the content of the standard.
4. **Fair Balance of Interests** — The process shall fairly balance interests of all stakeholders and shall not be dominated by any single interest category.
5. **Due Process** — Development of standards shall provide reasonable notice and opportunity for any person with a direct and material interest to express views on a proposed standard and the basis for those views, and to have that position considered in the development of the standards.
6. **Timeliness** — Development of standards shall be timely and responsive to new and changing priorities for reliability of the bulk power system.

### **305. Registered Ballot Body**

NERC reliability standards shall be approved by a registered ballot body prior to submittal to the board and then to ERO governmental authorities for their approval, where authorized by applicable legislation or agreement. This Section 305 sets forth the rules pertaining to the composition of, and eligibility to participate in, the registered ballot body.

1. **Eligibility to Vote on Standards** — Any person or entity may join the registered ballot body to vote on standards, whether or not such person or entity is a member of NERC.
2. **Inclusive Participation** — The segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the reliability of the bulk power system that can meet any one of the eligibility criteria for a segment is entitled to belong to and vote in each segment for which it qualifies, subject to limitations defined in Sections 305.3 and 305.5.
3. **General Criteria for Registered Ballot Body Membership** — The general criteria for membership in the segments are:
  - 3.1 **Multiple Segments** — A corporation or other organization with integrated operations or with affiliates that qualifies to belong to more than one segment (e.g., transmission owners and load serving entities) may join once in each segment for which it qualifies, provided that each segment constitutes a separate membership and the organization is represented in each segment by a different representative. Affiliated entities are collectively limited to one membership in each segment for which they are qualified.

- 3.2 **Withdrawing from a Segment or Changing Segments** — After its initial registration in a segment, each registered participant may elect to withdraw from a segment or apply to change segments at any time.
- 3.3 **Review of Segment Criteria** — The board shall review the qualification guidelines and rules for joining segments at least every three years to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
4. **Proxies for Voting on Standards** — Any registered participant may designate an agent or proxy to vote on its behalf. There are no limits on how many proxies an agent may hold. However, for the proxy to be valid, NERC must have in its possession written documentation signed by the representative of the registered participant that the voting right by proxy has been transferred from the registered participant to the agent.
5. **Stakeholder Segments** — The specific criteria for membership in each registered ballot body segment are defined in the *Reliability Standards Development Procedure* in **Appendix 3A**.
6. **Review of Stakeholder Segment Entries**  
NERC shall review all applications for joining the registered ballot body, and shall make a determination of whether the applicant's self-selection of a segment satisfies at least one of the guidelines to belong to that segment. The entity shall then become eligible to participate as a voting member of that segment. The Standards Committee shall resolve disputes regarding eligibility for membership in a segment, with the applicant having the right of appeal to the board.

### **306. Standards Committee**

The Standards Committee shall provide oversight of the reliability standards development process to ensure stakeholder interests are fairly represented. The Standards Committee shall not under any circumstance change the substance of a draft or approved standard.

1. **Membership** — The Standards Committee is a representative committee comprising representatives of two members of each of the segments in the registered ballot body.
2. **Elections** — Standards Committee members are elected for staggered (one per segment per year) two-year terms by the respective stakeholder segments in accordance with the *Procedure for the Election of Members of the NERC Standards Committee*, which is incorporated into these rules as **Appendix 2**. Segments may use their own election procedure if such a procedure is ratified by two-thirds of the members of a segment and approved by the board.
3. **Canadian Representation**
  - 3.1 **Provision for Sufficient Canadian Representation** — If any regular election of Standards Committee members does not result in at least two

Canadian members on the Standards Committee, the Canadian nominees who were not elected but who received the next highest percentage of votes within their respective segment(s) will be designated as additional members of the Standards Committee, as needed to achieve a total of two Canadian members.

- 3.2 **Terms of Specially Designated Canadian Members** — Each specially designated Canadian member of the Standards Committee shall have a term ending with the next annual election.
- 3.3 **Segment Preference** — If any segment has an unfilled representative position on the Standards Committee following the annual election, the first preference is to assign each specially designated Canadian representative to a segment with an unfilled representative position for which his or her organization qualifies.
- 3.4 **Rights of Specially Designated Canadian Members** — Any specially designated Canadian members of the Standards Committee shall have the same rights and obligations as all other members of the Standards Committee.
4. **Open Meetings** — All meetings of the Standards Committee shall be open and publicly noticed on the NERC Web site.

### **307. Standards Process Manager**

NERC shall assign a standards process manager to administer the development of reliability standards. The standards process manager shall be responsible for ensuring that the development and revision of standards are in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall work to achieve the highest degree of integrity and consistency of quality and completeness of the reliability standards. The standards process manager shall coordinate with any regional entities that develop regional reliability standards to ensure those standards are effectively integrated with the NERC reliability standards.

### **308. Steps in the Development of Reliability Standards**

1. **Procedure** — NERC shall develop reliability standards through the process set forth in the NERC *Reliability Standards Development Procedure* (**Appendix 3A**). The procedure includes a provision for approval of urgent action standards that can be completed within 60 days and emergency actions that may be further expedited.
2. **Board Approval** — Reliability standards or revisions to reliability standards approved by the ballot pool in accordance with the *Reliability Standards Development Procedure* shall be submitted for approval by the board. No reliability standard or revision to a reliability standard shall be effective unless approved by the board.

3. **Governmental Approval** — After receiving board approval, a reliability standard or revision to a reliability standard shall be submitted to all applicable ERO governmental authorities in accordance with Section 309. No reliability standard or revision to a reliability standard shall be effective within a geographic area over which an ERO governmental authority has jurisdiction unless approved by such ERO governmental authority or is otherwise made effective pursuant to the laws applicable to such ERO governmental authority.

**309. Filing of Reliability Standards for Approval by ERO Governmental Authorities**

1. **Filing of Reliability Standards for Approval** — Where authorized by applicable legislation or agreement, NERC shall file with the applicable ERO governmental authorities each reliability standard, modification to a reliability standard, or withdrawal of a standard that is approved by the board. Each filing shall be in the format required by the ERO governmental authority and shall include: a concise statement of the basis and purpose of the standard; the text of the standard; the implementation plan for the reliability standard; a demonstration that the standard meets the essential attributes of reliability standards as stated in Section 302; the drafting team roster; the ballot pool and final ballot results; and a discussion of public comments received during the development of the reliability standard and the consideration of those comments.
2. **Remanded Reliability Standards and Directives to Develop Standards** — If an ERO governmental authority remands a reliability standard to NERC or directs NERC to develop a reliability standard, NERC shall within five (5) business days notify all other applicable ERO governmental authorities, and shall within thirty (30) calendar days report to all ERO governmental authorities a plan and timetable for modification or development of the reliability standard. Standards that are remanded or directed by an ERO governmental authority shall be modified or developed using the *Reliability Standards Development Procedure*. NERC shall, during the development of a modification for the remanded standard or directed standard, consult with other ERO governmental authorities to coordinate any impacts of the proposed standards in those other jurisdictions. The urgent approval action procedure may be applied if necessary to meet a timetable for action required by the ERO governmental authorities, respecting to the extent possible the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interest in developing reliability standards.
3. **Directives to Develop Standards under Extraordinary Circumstances** — An ERO governmental authority may, on its own initiative, determine that extraordinary circumstances exist requiring expedited development of a reliability standard. In such a case, the applicable agency may direct the development of a standard within a certain deadline. NERC staff shall prepare the standards authorization request and seek a stakeholder sponsor for the request. If NERC is unable to find a sponsor for the proposed standard, NERC will be designated as the requestor. The proposed standard will then proceed through the standards development process, using the urgent and emergency action procedures

described in the *Reliability Standards Development Procedure* as necessary to meet the specified deadline. The timeline will be developed to respect, to the extent possible, the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing reliability standards.

- 3.1 Consistent with all reliability standards developed under the urgent or emergency action process, each of the three possible follow-up actions as documented in the *Reliability Standards Development Procedure* are to be completed through the standards development process and are subject to approval by the ERO governmental authorities in the U.S. and Canada.

### **310. Reliability Standards Annual Work Plan**

NERC shall develop and provide an annual work plan for development of reliability standards to the applicable ERO governmental authorities. NERC shall consider the comments and priorities of the ERO governmental authorities in developing and updating the work plan. Each annual work plan shall include a progress report comparing results achieved to the prior year's plan.

### **311. Regional Entity Standards Development Procedures**

1. **NERC Approval of Regional Entity Reliability Standards Development Procedure** — To enable a regional entity to develop regional reliability standards that are to be recognized and made part of NERC reliability standards, a regional entity may request NERC to approve a regional entity reliability standards development procedure.
2. **Public Notice and Comment on Regional Reliability Standards Development Procedure** — Upon receipt of such a request, NERC shall publicly notice and request comment on the proposed regional standards development procedure, allowing a minimum of 45 days for comment. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to withdraw the request, revise the procedure and request another posting for comment, or submit the procedure, along with its consideration of any objections received, for approval by NERC.
3. **Evaluation of Regional Reliability Standards Development Procedure** — NERC shall evaluate whether a regional reliability standards development procedure meets the criteria listed below and shall consider stakeholder comments, any unresolved stakeholder objections, and the consideration of comments provided by the regional entity, in making that determination. If NERC determines the regional reliability standards development procedure meets these requirements, the procedure shall be submitted to the board for approval. The board shall consider the recommended action, stakeholder comments, any unresolved stakeholder comments, and the regional entity consideration of comments in determining whether to approve the regional reliability standards development procedure.

- 3.1 **Evaluation Criteria** — The regional reliability standards development procedure shall be:
- 3.1.1 **Open** — The regional reliability standards development procedure shall provide that any person or entity who is directly and materially affected by the reliability of the bulk power systems within the regional entity shall be able to participate in the development and approval of reliability standards. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in the regional entity, a regional entity or any organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.
  - 3.1.2 **Inclusive** — The regional reliability standards development procedure shall provide that any person with a direct and material interest has a right to participate by expressing an opinion and its basis, having that position considered, and appealing through an established appeals process if adversely affected.
  - 3.1.3 **Balanced** — The regional reliability standards development procedure shall have a balance of interests and shall not permit any two interest categories to control the vote on a matter or any single interest category to defeat a matter.
  - 3.1.4 **Due Process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.
  - 3.1.5 **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.
  - 3.1.6 **Accreditation of Regional Standards Development Procedure** — A regional entity's reliability standards development procedure that is accredited by the American National Standards Institute or the Standards Council of Canada shall be deemed to meet the criteria listed in this Section 311.3.1, although such accreditation is not a prerequisite for approval by NERC.
  - 3.1.7 **Use of NERC Procedure** — A regional entity may adopt the *NERC Reliability Standards Development Procedure* as the regional reliability standards development procedure, in which

case the regional entity's procedure shall be deemed to meet the criteria listed in this Section 311.3.1.

4. **Revisions of Regional Reliability Standards Development Procedures** — Any revision to a regional reliability standards development procedure shall be subject to the same approval requirements set forth in Sections 311.1 through 311.3.
5. **Duration of Regional Reliability Standards Development Procedures** — The regional reliability standards development procedure shall remain in effect until such time as it is replaced with a new version approved by NERC or it is withdrawn by the regional entity. The regional entity may, at its discretion, withdraw its regional reliability standards development procedure at any time.

### **312. Regional Reliability Standards**

1. **Basis for Regional Reliability Standards** — Regional entities may propose regional reliability standards that set more stringent reliability requirements than the NERC reliability standard or cover matters not covered by an existing NERC reliability standard. Such regional reliability standards shall in all cases be approved by NERC and made part of the NERC reliability standards and shall be enforceable in accordance with the delegation agreement between NERC and the regional entity or other instrument granting authority over enforcement to the regional entity. No entities other than NERC and the regional entity shall be permitted to develop regional reliability standards that are enforceable under statutory authority delegated to NERC and the regional entity.
2. **Regional Reliability Standards That are Directed by a NERC Reliability Standard** — Although it is the intent of NERC to promote uniform reliability standards across North America, in some cases it may not be feasible to achieve a reliability objective with a reliability standard that is uniformly applicable across North America. In such cases, NERC may direct regional entities to develop regional reliability standards necessary to implement a NERC reliability standard. Such regional reliability standards that are developed pursuant to a direction by NERC shall be made part of the NERC reliability standards.
3. **Procedure for Developing an Interconnection-wide Regional Standard** — A regional entity organized on an interconnection-wide basis may propose a regional reliability standard for approval as a NERC reliability standard to be made mandatory for all applicable bulk power system owners, operators, and users within that interconnection.
  - 3.1 **Presumption of Validity** — An interconnection-wide regional reliability standard that is determined by NERC to be just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities, shall be adopted as a NERC reliability standard. NERC shall rebuttably presume that a regional reliability standard developed, in accordance with a regional reliability standards development process approved by NERC, by a regional entity organized on an interconnection-

wide basis, is just, reasonable, and not unduly discriminatory or preferential, and in the public interest, and consistent with such other applicable standards of governmental authorities.

- 3.2 **Notice and Comment Procedure for Interconnection-wide Regional Reliability Standard** — NERC shall publicly notice and request comment on the proposed interconnection-wide regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity’s reliability standards development process. The regional entity shall have an opportunity to resolve any objections identified in the comments and may choose to comment on or withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.
- 3.3 **Approval of Interconnection-wide Regional Reliability Standard by NERC** — NERC shall evaluate and recommend whether a proposed interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections that could serve as a basis for rebutting the presumption of validity of the regional reliability standard. The regional entity, having been notified of the results of the evaluation and recommendation concerning NERC proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity’s request, NERC’s recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity’s consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.
- 3.4 **ERO Governmental Authority Approval** — An interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.
- 3.5 **Enforcement of Interconnection-wide Regional Reliability Standard** — An interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.



4. **Procedure for Developing Non-Interconnection-Wide Regional Reliability Standards**

Regional entities that are not organized on an interconnection-wide basis may propose regional reliability standards to apply within their respective regions. Such standards may be developed through the NERC reliability standards development procedure, or alternatively, through a regional reliability standards development procedure that has been approved by NERC.

4.1 **No Presumption of Validity** — Regional reliability standards that are not proposed to be applied on an interconnection-wide basis are not presumed to be valid but may be demonstrated by the proponent to be valid.

4.2 **Notice and Comment Procedure for Non-Interconnection-wide Regional Reliability Standards** — NERC shall publicly notice and request comment on the proposed regional reliability standard, allowing a minimum of 45 days for comment. NERC may publicly notice and post for comment the proposed regional reliability standard concurrent with similar steps in the regional entity's reliability standards development process. The regional entity shall have an opportunity to comment on or resolve any objections identified in the comments and may choose to withdraw the request, revise the proposed regional reliability standard and request another posting for comment, or submit the proposed regional reliability standard along with its consideration of any objections received, for approval by NERC.

4.3 **NERC Approval of Non-Interconnection-wide Regional Reliability Standards** — NERC shall evaluate and recommend whether a proposed non-Interconnection-wide regional reliability standard has been developed in accordance with all applicable procedural requirements and whether the regional entity has considered and resolved stakeholder objections. The regional entity, having been notified of the results of the evaluation and recommendation concerning proposed regional reliability standard, shall have the option of presenting the proposed regional reliability standard to the board for approval as a NERC reliability standard. The board shall consider the regional entity's request, the recommendation for action on the regional reliability standard, any unresolved stakeholder comments, and the regional entity's consideration of comments, in determining whether to approve the regional reliability standard as a NERC reliability standard.

4.4 **NERC Governmental Authority Approval** — A non-Interconnection-wide regional reliability standard that has been approved by the board shall be filed with the applicable ERO governmental authorities for approval, where authorized by applicable legislation or agreement, and shall become effective when approved by such ERO governmental authorities or on a date set by the ERO governmental authorities.

- 4.5 **Enforcement of Non-Interconnection-wide Regional Reliability Standards** — A non-Interconnection-wide regional reliability standard that has been approved by the board and by the applicable ERO governmental authorities or is otherwise made effective within Canada as mandatory within a particular region shall be applicable and enforced as a NERC reliability standard within the region.

5. **Appeals**

A Regional Entity shall have the right to appeal NERC's decision not to approve a proposed regional reliability standard or variance to the Commission or other applicable governmental authority.

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

1. **Regional Criteria** — Regional entities may develop regional criteria that are necessary to implement, to augment, or to comply with reliability standards, but which are not reliability standards. Regional criteria may also address issues not within the scope of reliability standards, such as resource adequacy. Regional criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents used to enhance the reliability of the regional bulk power system. These documents typically provide benefits by promoting more consistent implementation of the NERC reliability standards within the region. These documents are not NERC reliability standards, regional reliability standards, or regional variances, and therefore are not enforceable under authority delegated by NERC pursuant to delegation agreements and do not require NERC approval.
2. **Catalog of Regional Reliability Criteria** — NERC shall maintain a current catalog of regional reliability criteria. Regional entities shall provide a catalog listing of regional reliability criteria to NERC and shall notify NERC of changes to the listing. Regional entities shall provide any listed document to NERC upon written request.

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

**Notice of Potential Conflict** — If a bulk power system owner, operator, or user determines that a NERC or regional reliability standard may conflict with a function, rule, order, tariff, rate schedule, legislative requirement or agreement that has been accepted, approved, or ordered by a governmental authority affecting that entity, the entity shall expeditiously notify the governmental authority, NERC, and the relevant regional entity of the conflict.

1. **Determination of Conflict** — NERC, upon request of the governmental authority, may advise the governmental authority regarding the conflict and propose a resolution of the conflict, including revision of the reliability standard if appropriate.
2. **Regulatory Precedence** — Unless otherwise ordered by a governmental authority, the affected bulk power system owner, operator, or user shall continue

to follow the function, rule, order, tariff, rate schedule, legislative requirement, or agreement accepted, approved, or ordered by the governmental authority until the governmental authority finds that a conflict exists and orders a remedy and such remedy is affected.

**315. Revisions to NERC Reliability Standards Development Procedure**

Any person or entity may submit a written request to modify NERC *Reliability Standards Development Procedure*. Consideration of the request and development of the revision shall follow the process defined in the NERC *Reliability Standards Development Procedure*. Upon approval by the board, the revision shall be submitted to the ERO governmental authorities for approval. Changes shall become effective only upon approval by the ERO governmental authorities or on a date designated by the ERO governmental authorities or as otherwise applicable in a particular jurisdiction.

**316. Accreditation**

NERC shall seek continuing accreditation of the NERC reliability standards development process by the American National Standards Institute and the Standards Council of Canada.

**317. Five-Year Review of Standards**

NERC shall complete a review of each NERC reliability standard at least once every five years from the effective date of the standard or the latest revision to the standard, whichever is later. The review process shall be conducted in accordance with the NERC *Reliability Standards Development Procedure*. The standards process manager shall be responsible for administration of the five-year review of reliability standards. As a result of this review, the NERC reliability standard shall be reaffirmed, revised, or withdrawn. If the review indicates a need to revise or withdraw the standard, a request for revision or withdrawal shall be prepared, submitted and addressed in accordance with the NERC *Reliability Standards Development Procedure*.

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

NERC shall, through a memorandum of understanding, maintain a close working relationship with the North American Energy Standards Board and ISO/RTO Council to ensure effective coordination of wholesale electric business practice standards and market protocols with the NERC reliability standards.

**319. Archived Standards Information**

NERC shall maintain a historical record of reliability standards information that is no longer maintained on-line. For example, standards that expired or were replaced may be removed from the on-line system. Archived information shall be retained indefinitely as practical, but in no case less than five years or one complete standards review cycle from the date on which the standard was no longer in effect. Archived records of reliability standards information shall be available electronically within 30 days following the receipt by the standards process manager of a written request.

**320. Alternate Method for Adopting Violation Risk Factors**

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard using the procedures set out in Section 1400 of these Rules of Procedure.

## SECTION 400 — COMPLIANCE ENFORCEMENT

### 401. Scope of the NERC Compliance Enforcement Program

1. **Components of the NERC Compliance Enforcement Program** — NERC shall develop and implement a NERC Compliance Monitoring and Enforcement Program to promote the reliability of the bulk power system by enforcing compliance with approved reliability standards in those regions of North American in which NERC and/or a regional entity (pursuant to a delegation agreement with NERC that has been approved by the applicable ERO governmental authority) has been given enforcement authority. There are four distinct parts of the NERC Monitoring and Compliance Enforcement Program: (1) NERC's oversight of the regional entity compliance programs (Section 402), (2) the definition of the required regional entity compliance enforcement program attributes (Section 403), (3) NERC's monitoring of regional entity compliance with reliability standards (Section 404), and (4) the monitoring of compliance with reliability standards that are applicable to NERC (Sections 405–406).
2. **Who Must Comply** — Where required by applicable legislation, regulation, rule or agreement, all bulk power system owners, operators, and users, regional entities, and NERC, are required to comply with all approved NERC reliability standards at all times. Regional reliability standards and regional variances approved by NERC and the applicable ERO governmental authority shall be considered NERC reliability standards and shall apply to all bulk power system owners, operators, or users responsible for meeting those standards within the regional entity boundaries, whether or not the bulk power system owner, operator, or user is a member of the regional entity.
3. **Data Access** — All bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to monitor compliance with the reliability standards. NERC and the applicable regional entity will define the data retention and reporting requirements in the reliability standards and compliance reporting procedures.
4. **Role of Regional Entities in the Compliance Enforcement Program** — Each regional entity that has been delegated authority through a delegation agreement or other legal instrument approved by the applicable ERO governmental authority shall, in accordance with the terms of the approved delegation agreement, administer a regional entity compliance enforcement program to meet the NERC Compliance Monitoring and Enforcement Program goals and the requirements in this Section 400.
5. **Program Continuity** — NERC will ensure continuity of compliance monitoring and enforcement within the geographic boundaries of a regional entity in the event that NERC does not have a delegation agreement, or the regional entity withdraws from the agreement or does not operate its compliance enforcement program in accordance with the delegation agreement or other applicable requirements.

- 5.1 Should NERC not have a delegation agreement with a regional entity covering a geographic area, or a regional entity withdraws from an existing delegation agreement or the delegation agreement is otherwise terminated, NERC will directly administer the Compliance Monitoring and Enforcement Program applicable to owners, operators and users of the bulk-power system within that geographic area.
  1. This monitoring and enforcement will be accomplished by NERC and compliance staff from another approved regional entity.
  2. If an existing delegation agreement with a regional entity is terminating, the regional entity shall promptly provide to NERC all relevant compliance information regarding registered entities, contacts, prior compliance information and actions, mitigation plans, and remedial actions for the period in which the regional entity was responsible for administering the Compliance Monitoring and Enforcement Program.
  3. NERC will levy and collect all penalties directly and will utilize any penalty monies collected to offset the expenses of administering the compliance monitoring and enforcement program for the geographic area.
- 5.2 Should a regional entity seek to withdraw from its delegation agreement, NERC will seek agreement from another regional entity to amend its delegation agreement with NERC to extend that regional entity's boundaries for compliance monitoring and enforcement. In the event no regional entity is willing to accept this responsibility, NERC will administer the Compliance Monitoring and Enforcement Program within the geographical boundaries of the regional entity seeking to withdraw from the delegation agreement, in accordance with Section 401.5.1.
6. **Actively Monitored Requirements** — NERC, with input from the regional entities, stakeholders, and regulators, shall annually select a subset of the NERC reliability standards and requirements to be actively monitored and audited in the NERC annual compliance program. Compliance is required with all NERC reliability standards whether or not they are included in the subset of reliability standards and requirements designated to be actively monitored and audited in the NERC annual compliance program.
7. **Penalties, Sanctions, and Remedial Actions** — NERC and regional entities will apply penalties, sanctions, and remedial actions that bear a reasonable relation to the seriousness of a violation and take into consideration timely remedial efforts as defined in the NERC *Sanction Guidelines*, which is incorporated into these rules as **Appendix 4B**.
8. **Multiple Enforcement Actions** – A registered entity shall not be subject to an enforcement action by NERC and a regional entity for the same violation.
9. **Records** — NERC shall maintain a record of each compliance submission, including self-reported, confirmed, and alleged violations of approved reliability

standards; associated penalties, sanctions, remedial actions and settlements; and the status of mitigation actions.

**402. NERC Oversight of the Regional Entity Compliance Enforcement Programs**

1. **NERC Monitoring Program** — NERC shall have a program to monitor the compliance enforcement program of each regional entity that has been delegated authority. The objective of this monitoring program shall be to ensure that the regional entity carries out its compliance enforcement program in accordance with these rules and the terms of the delegation agreement, and to ensure consistency and fairness of the regional entity’s compliance enforcement program. Oversight and monitoring by NERC shall be accomplished through an annual compliance enforcement program review, program audits, and regular evaluations of regional entity compliance enforcement program performance as described below.
  - 1.1 **NERC Review of Regional Compliance Enforcement Program Annual Plans** — NERC shall require each regional entity to submit for review and approval an annual compliance enforcement program implementation plan. NERC shall review each regional entity’s compliance enforcement program annual implementation plan and shall accept the plan if it meets NERC requirements and the requirements of the delegation agreement.
  - 1.2 **Regional Entity Program Evaluation** — NERC shall annually evaluate the goals, tools, and procedures of each regional entity compliance enforcement program to determine the effectiveness of each regional entity program, using criteria developed by the NERC Compliance and Certification Committee.
  - 1.3 **Regional Entity Program Audit** — At least once every three years, NERC shall conduct an audit to evaluate how each regional entity compliance enforcement program implements the NERC Compliance Monitoring and Enforcement Program. The evaluation shall be based on these rules of procedures, the delegation agreement, approved regional entity annual compliance enforcement program annual implementation plans, required program attributes, and the NERC compliance program procedures. These evaluations shall be provided to the appropriate ERO governmental authorities to demonstrate the effectiveness of each regional entity.
    - 1.3.1 NERC shall maintain an audit procedure containing the requirements, steps, and timelines to conduct an audit of each regional entity compliance enforcement program. The current procedure is contained in the NERC Audit of Regional Entity Compliance Programs, which is incorporated into these rules as **Appendix 4A**.
    - 1.3.2 NERC shall establish a program to audit bulk power system owners, operators, and users operating within a regional entity to verify the findings of previous compliance audits conducted by the regional entity to evaluate how well the regional entity compliance

enforcement program is meeting its delegated authority and responsibilities.

- 1.4 ERO governmental authorities will be allowed to participate as an observer in any audit conducted by NERC of a regional entity's compliance monitoring and enforcement program. A representative of the regional entity being audited will be allowed to participate in the audit as an observer.
2. **Consistency Among Regional Compliance Enforcement Programs** — To provide for a consistent compliance enforcement program for all bulk power system owners, operators, and users required to comply with approved reliability standards, NERC shall maintain a single, uniform compliance monitoring and enforcement program. Differences in regional entity program methods, including determination of violations and penalty assessment, shall be justified on a case-by-case basis and fully documented in each regional entity delegation agreement.
  - 2.1 NERC shall ensure that each of the regional entity compliance enforcement programs meets these Rules of Procedure and follows the terms of the delegation agreement and the approved regional entity compliance enforcement program annual plan.
  - 2.2 NERC shall develop a single, uniform compliance monitoring and enforcement program containing the procedures to ensure the consistency and fairness of the processes used to determine regional entity compliance enforcement program findings of compliance and noncompliance, and the application of penalties and sanctions.
  - 2.3 NERC shall periodically conduct regional entity compliance manager forums. These forums shall use the results of regional entity compliance program audits and findings of NERC compliance staff to identify and refine regional entity compliance program differences into a set of best practices over time.
3. **Information Collection and Reporting** — NERC and the regional entities shall implement data management procedures that address data reporting requirements, data integrity, data retention, data security, and data confidentiality.
4. **Violation Disclosure** — NERC shall disclose all confirmed violations and maintain as confidential alleged violations, according to the reporting and disclosure process in Section 408.
5. **Authority to Determine Noncompliance, Levy Penalties and Sanctions, and Issue Remedial Action Directives** — NERC and regional entity compliance staff shall have the authority and responsibility to make initial determinations of compliance or noncompliance, and where authorized by the appropriate governmental authorities or where otherwise authorized, to determine penalties and sanctions for noncompliance with a reliability standard, and issue remedial



action directives. Regional entity boards or a compliance panel reporting directly to the regional entity board will be vested with the authority for the overall regional entity compliance program and have the authority to impose penalties and sanctions on behalf of NERC, where authorized by applicable legislation or agreement. Remedial action directives may be issued by NERC or a regional entity that is aware of a bulk power system owner, operator, or user that is about to engage in an act or practice that would result in noncompliance. If, after receiving such a directive, the bulk power system owner, operator, or user does not take appropriate action to avert a violation of a reliability standard, NERC may petition the applicable ERO governmental authority to issue a compliance order.

6. **Due Process** — NERC shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The appeals process is set forth in Sections 409–411. The process shall allow bulk power system owners, operators, and users to appeal the regional entity’s findings of noncompliance and to appeal penalties, sanctions, and remedial actions that are levied by the regional entity. Appeals beyond the NERC process will be heard by the applicable governmental authority.

The appeals process will also allow for appeals to NERC of any findings of noncompliance issued by NERC to a regional entity for standards and requirements where the regional entity is monitored for compliance to a reliability standard. No monetary penalties will be levied in these matters; however sanctions, remedial actions, and directives to comply may be applied by NERC.

7. **Conflict Disclosure** — NERC shall disclose to the appropriate governmental authorities any potential conflicts between a market rule and the enforcement of a regional reliability standard.
8. **Confidentiality** — To maintain the integrity of the NERC Compliance Monitoring and Enforcement Program, NERC and regional entity staff, audit team members, and committee members shall maintain the confidentiality of information shared during investigations, audits, drafting of reports, appeals, and closed meetings.
  - 8.1 NERC and the regional entity shall have in place appropriate codes of conduct and confidentiality agreements for staff and other compliance enforcement program participants.
  - 8.2 Individuals not bound by NERC or regional entity codes of conduct who serve on compliance-related committees or audit teams shall sign a NERC confidentiality agreement prior to participating on the committee or team.
  - 8.3 Information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall

not be distributed outside of a committee or team, nor released publicly. Other information subject to confidentiality is identified in Section 1500.

8.4 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to appropriate action by the regional entity or NERC, including prohibiting participation in future compliance enforcement activities.

9. **Auditor Training** — NERC shall develop and provide training in auditing skills to all people who participate in NERC and regional entity compliance enforcement audits. Training for NERC and regional entity personnel and others who serve as compliance audit team leaders shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.

#### **403. Required Attributes of Regional Entity Compliance Enforcement Programs**

Each regional entity compliance enforcement program shall promote excellence in the enforcement of reliability standards. To accomplish this goal, each regional entity compliance enforcement program shall at a minimum meet all of the following attributes.

##### **Program Structure**

1. **Independence** — Each regional entity's governance of its compliance enforcement program shall exhibit independence, meaning the compliance enforcement program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the regional entity. The program shall not be unduly influenced by the bulk power system owners, operators, and users being monitored or other regional entity activities that are required to meet the reliability standards. Regional entities must include rules providing that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
2. **Exercising Authority** — Each regional entity compliance enforcement program shall exercise the responsibility and authority in carrying out the delegated functions of the NERC Compliance Monitoring and Enforcement Program in accordance with delegation agreements. These functions include but are not limited to: data gathering, data reporting, compliance violation investigations, compliance auditing activities, evaluating compliance and noncompliance, imposing penalties and sanctions, and approving and tracking mitigation actions.
3. **Delegation of Authority** — To maintain independence, fairness, and consistency in the NERC Compliance Monitoring and Enforcement Program, a regional entity shall not sub-delegate its compliance enforcement program duties to entities or persons other than the regional entity compliance enforcement program staff, unless required by statute or regulation in the applicable jurisdiction.

4. **Hearings of Contested Findings or Sanctions** — The regional entity board or compliance panel reporting directly to the regional entity board (with appropriate recusal procedures) will be vested with the authority for conducting compliance hearings in which any bulk power system owner, operator, or user provided notice of an alleged violation may present facts and other information to contest a notice of alleged violation or any proposed penalty, sanction, or remedial action. Compliance hearings shall be conducted in accordance with the Hearing Process set forth in Attachment 2 to the NERC Compliance Monitoring and Enforcement Program document. If a stakeholder body serves as the hearing body, no two industry sectors may control any decision and no single segment may veto any matter related to compliance after recusals.

#### **Program Resources**

5. **Regional Entity Compliance Staff** — Each regional entity shall have sufficient resources to meet delegated compliance enforcement responsibilities, including the necessary professional staff to manage and implement the regional entity compliance enforcement program.
6. **Regional Entity Compliance Staff Independence** — The regional entity compliance enforcement program staff shall be capable of and required to make all initial determinations of compliance and noncompliance and determine penalties, sanctions, and remedial actions.
  - 6.1 Regional entity compliance enforcement program staff shall not have a conflict of interest, real or perceived, in the outcome of compliance violation investigations, compliance audits, reports, or sanctions. The regional entity shall have in effect a conflict of interest policy.
  - 6.2 Regional entity compliance enforcement program staff shall have the authority and responsibility to investigate, audit (with the input of industry experts or regional members), make initial determinations of compliance or noncompliance, and levy penalties and sanctions without interference or undue influence from regional entity members and their representative or other industry entities.
  - 6.3 Regional entity compliance enforcement program staff may call upon independent technical experts who have no conflict of interest in the outcome of the compliance violation investigation or compliance audit to provide technical advice or recommendations in the determination of compliance or noncompliance in compliance audits, compliance violation investigations, or review of self-reported violations.
  - 6.4 Regional entity compliance enforcement program staff shall abide by the confidentiality requirements contained in Section 1500 of these Rules of Procedure, the NERC delegation agreement and other confidentiality agreements required by the NERC Compliance Monitoring and Enforcement Program.
  - 6.5 Contracting with independent consultants or others working for the regional entity compliance enforcement program shall be permitted

provided the individual has not received compensation from a bulk power system owner, operator, or user being monitored for a period of at least the preceding six months and owns no financial interest in any bulk power system owner, operator, or user being monitored for compliance to the reliability standard, regardless of where the bulk power system owner, operator, or user operates. Any such individuals for the purpose of these rules shall be considered as augmenting regional entity compliance staff.

- 7. Use of Industry Experts and Regional Entity Members** — Industry experts and regional entity members may be called upon to provide their technical expertise in compliance violation investigations, compliance audits, and other compliance activities.
- 7.1 The regional entity shall have procedures defining the allowable involvement of industry experts and regional entity members. The procedures shall address applicable antitrust laws and conflicts of interest.
- 7.2 Industry experts and regional entity members shall have no conflict of interest or financial interests in the outcome of their activities.
- 7.3 Regional entity members and volunteers, as part of teams or regional entity committees, may provide input to the regional entity compliance staff so long as the authority and responsibility for (i) initially evaluating compliance or noncompliance and (ii) levying penalties, sanctions, or remedial actions shall not be delegated to any person or entity other than the compliance staff of the regional entity. Industry experts, regional entity members, or regional entity committees shall not make initial determinations of noncompliance or levy penalties, sanctions, or remedial actions. Any committee involved shall be organized so that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.
- 7.4 Industry experts and regional entity members shall sign a confidentiality agreement appropriate for the activity being performed.
- 7.5 All industry experts and regional entity members participating in compliance audits and compliance violation investigations shall successfully complete auditor training provided by NERC or the regional entity prior to performing these activities

### **Program Design**

8. **Regional Entity Compliance Enforcement Program Content** — All approved reliability standards shall be included in the regional entity compliance enforcement program for all bulk power system owners, operators, and users within the defined boundaries of the regional entity. Compliance to approved regional entity reliability standards is applicable only within the footprint of the regional entity that submitted those particular regional entity reliability standards for approval. NERC will identify the minimum set of reliability standards and requirements to be actively monitored by the regional entity in a given year.
9. **Antitrust Provisions** — Each regional entity's compliance enforcement program shall be structured and administered to abide by U.S. antitrust law and Canadian competition law.
10. **Information Submittal** — All bulk power system owners, operators, and users within the regional entity responsible for complying with reliability standards shall submit timely and accurate information when requested by the regional entity or NERC, in accordance with established procedures of NERC and the regional entity. NERC and the regional entities shall preserve any mark of confidentiality on information submitted pursuant to Section 1502.1.
  - 10.1 Each regional entity has the authority to collect the necessary information to determine compliance and shall develop processes for gathering data from the bulk power system owners, operators, and users they monitor.
  - 10.2 When requested, the regional entities shall report information to NERC promptly and in accordance with NERC procedures.
  - 10.3 Regional entities shall notify NERC of all violations of NERC reliability standards by entities over which the regional entity has enforcement authority or enforcement responsibilities, whether self-reported, alleged, or confirmed, in accordance with the *Reporting and Disclosure Process* in Section 408.
  - 10.4 A bulk power system owner, operator, or user found in noncompliance with a reliability standard shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The regional entity compliance staff shall review and approve the mitigation plan [in accordance with section 403.18 \[P 56\]](#). Regional entity compliance staff may issue remedial action directives to owners, operators and users of the bulk-power system to comply with reliability standards, as needed to preserve the reliability of the bulk power system.
  - 10.5 An officer of a bulk power system owner, operator, or user shall certify as accurate all compliance data self-reported to the regional entity compliance enforcement program.

- 10.6 Regional entities shall develop and implement procedures to spot-check and verify the compliance information submitted by bulk power system owners, operators, and users.
11. **Compliance Audits of Bulk Power System Owners, Operators, and Users** — Each regional entity will maintain a program of proactive compliance audits. The regional entity shall audit each bulk power system owner, operator, or user responsible for complying with reliability standards. A compliance audit is a process in which a detailed review of the activities of a bulk power system owner, operator, or user is performed to determine if that bulk power system owner, operator, or user is complying with approved reliability standards.
- 11.1 For those bulk power system owners and operators with primary reliability responsibility (i.e., entities requiring organizational certification), the compliance audit will be performed at least once every three years. For other bulk power system owners, operators, and users on the NERC Compliance Registry, compliance audits shall be performed on a schedule established by NERC.
- 11.2 Audits of bulk power system owners and operators with primary reliability responsibility will be performed on the audited entity's site. For other bulk power system owners, operators, and users on the NERC Compliance Registry, the audit may be either an on-site audit or based on review of documents, as determined to be necessary and appropriate by NERC or regional entity compliance program, staff.
- 11.3 Compliance audits must include a detailed review of the activities of the bulk power system owner, operator, or user to determine if the bulk power system owner, operator, or user is complying with all approved reliability standards identified for audit by NERC. The compliance audit shall include a review of supporting documentation and evidence used by the bulk power system owner, operator or user for self-certification compliance reporting for an appropriate reporting period since the last compliance audit.
- 11.4 NERC compliance staff may participate on any regional entity audit team, at any time at NERC's discretion. Additionally, any applicable ERO governmental authority may participate on an audit team as an observer in any regional entity audit within its jurisdiction, at the ERO governmental authority's discretion.
12. **Compliance Audit Results** — The regional entity shall make an evaluation of a bulk power system owner's, operator's, or user's compliance based on the information obtained from a compliance audit and previously reported compliance information. After due process is complete, this evaluation (excluding any critical energy infrastructure information or other confidential

information) shall be made public. The regional entity shall send the report to NERC for public posting.

13. **Compliance Violation Investigations** — Compliance violation investigations are necessary to determine if a violation of reliability standards has occurred when certain system events occur, or when other owners, operators, or users of the bulk power system file complaints. NERC is ultimately responsible for how a regional entity conducts compliance violation investigations. Compliance violation investigations are initiated at the discretion of the regional entity compliance enforcement program staff, the senior executive officer of the regional entity, NERC compliance staff, or the NERC president. The regional entity shall respond to any complaints filed by one entity against another that allege a violation of reliability standards by a bulk power system owner, operator, or user. The regional entity may ask NERC to assist with the compliance violation investigation. Situations that can trigger a compliance violation investigation include but are not limited to (i) significant problems arising on the system, (ii) chronic noncompliance violations, (iii) bulk power system owners, operators, and users not submitting data in a timely or accurate manner, (iv) probable violations identified during readiness evaluations, (v) spot-checks to verify submitted data, (vi) filing of a compliance complaint with the regional entity or NERC, or (vii) Nuclear Regulatory Commission-defined incidents occurring on the transmission system.
14. **Confidentiality of Compliance Audits and Compliance Violation Investigations** — All compliance violation investigations are to be non-public unless NERC, the regional entity or FERC or another applicable governmental authority with jurisdiction determines a need to conduct a public investigation. Advance authorization from the applicable ERO governmental authority is required to make public any compliance violation investigation, compliance audit, or any information relating to a compliance violation investigation or compliance audit, or to permit interventions when determining whether to impose a penalty. This prohibition on making public any compliance violation investigation or compliance audit does not prohibit NERC or a regional entity from publicly disclosing the initiation of or results from an analysis of a significant system event under Section 807 or of off-normal events or system performance under Section 808, so long as specific allegations or conclusions regarding alleged violations of reliability standards are not included in such disclosures.
15. **Report all Violations** — Each regional entity compliance enforcement program shall report to NERC all violations whether self-reported, alleged, or discovered by the region through a compliance audit or compliance violation investigation of all approved reliability standards in accordance with the *Reporting and Disclosure Process* in Section 408. The regional entity will promptly notify NERC of any change in the status of a violation and provide updates at least monthly regarding the status of any compliance audits, compliance violation investigations, or hearings.

16. **Critical Energy Infrastructure Information** — Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information. In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information shall be redacted according to NERC procedures and shall not be released publicly.
  
17. **Penalties, Sanctions, and Remedial Actions** — Each regional entity will apply all penalties, sanctions, and remedial actions directives in accordance with the approved *ERO Sanction Guidelines*. Any changes to the *ERO Sanction Guidelines* to be used by any regional entity must be approved by NERC and submitted to the appropriate ERO governmental body for approval. All confirmed violations, penalties, and sanctions will be provided to NERC for review and filing with applicable ERO governmental authorities as a notice of penalty.
  
18. **Mitigation of Violations** — Each regional entity compliance enforcement program will require that any bulk power system owner, operator, or user found to be in noncompliance with a reliability standard requirement shall submit a mitigation plan with a timeline addressing how the noncompliance will be corrected. The mitigation plan shall be reviewed and approved by the regional entity compliance staff and the regional entity's compliance panel or board as appropriate. The regional entity shall approve or reject the mitigation plan within thirty (30) days of receipt, unless the regional entity notifies the owner, operator or user and NERC within such thirty (30) day period or any extended review period that the regional entity's review period is being extended and states the length of the extended review period. If the regional entity does not notify the owner, operator or user within the initial or any extended review period that the proposed mitigation plan is accepted or rejected, the proposed mitigation plan shall be deemed accepted. [P 56] If the regional entity accepts the mitigation plan, it shall notify the owner, operator or user and shall promptly submit the complete approved mitigation plan to NERC in accordance with NERC's form. NERC shall, within thirty (30) days of the receipt of the mitigation plan, approve or disapprove the mitigation plan, and in the case of disapproval provide a statement of reasons (which may include a list of changes to the mitigation plan that would make it acceptable to NERC), and shall notify the regional entity and the bulk power system owner, operator or user of NERC's approval or disapproval of the mitigation plan. [P 56] NERC will submit to the Federal Energy Regulatory Commission, as non-public information, an approved mitigation plan relating to violations of reliability standards within seven (7) business days after NERC approves the mitigation plan. NERC ~~may~~ shall subsequently publicly post the approved mitigation plan as part of the public posting of the related confirmed violation, penalty or sanction in accordance with section 408.6 or section 403.19, or as part of the public posting of a settlement in



[which the owner, operator or user of the bulk power system neither admits or denies that it violated a reliability standard. \[P 56\].](#)

19. **Settlement Processes** — The regional entity may enter into a settlement process with owners, operators and users of the bulk power system for alleged violations of a reliability standard and any associated financial penalty, sanction, or mitigation actions. NERC must be notified of all settlement proceedings and may participate in any settlement processes. Regional entities may consider all relevant facts in the settlement. Any settlement must ensure that the reliability of the bulk power system will not be compromised by the settlement and that a violation of reliability standards will not occur as a result of the settlement. All settlements must be reported to NERC, which will in turn report the settlement of an alleged violation to the Federal Energy Regulatory Commission or the applicable ERO governmental authority. NERC shall publicly post each violation (whether confirmed or not) that is settled, and the resulting penalty or sanction.
  
20. **Regional Hearing Process** — Each regional entity compliance enforcement program shall establish and maintain a fair, independent, and nondiscriminatory process for hearing contested violations and any penalties or sanctions levied where authorized by applicable legislation or agreement. The hearing process shall allow bulk power system owners, operators, and users to contest both findings of compliance violations and any penalties and sanctions that are proposed to be levied. The regional entity hearing process shall be conducted before the regional entity board or a balanced committee established by and reporting to the regional entity board as the final adjudicator, provided, that (i) in ERCOT, the Public Utility Commission of Texas may act as the final adjudicator, and (ii) Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions. The regional entity hearing process shall (i) include provisions for recusal of any members of the hearing body with a potential conflict of interest, real or perceived, from all compliance matters considered by the hearing body for which the potential conflict of interest exists and (ii) provide that no two industry sectors may control any decision and no single segment may veto any matter brought before the hearing body after recusals.

Each regional entity will notify NERC of all hearings and NERC may observe any of the proceedings. Each regional entity will notify NERC of the outcome of all hearings.

If a bulk power system owner, operator, or user has completed the regional entity hearing process and desires to appeal the outcome of the hearing, the bulk power system owner, operator, or user shall appeal to NERC, except that a determination of violation or penalty that has been directly adjudicated by an ERO governmental authority shall be appealed with that ERO governmental authority.

21. **Annual Regional Entity Compliance Enforcement Program Implementation Plan** — Each regional entity shall annually develop and submit to NERC for approval a regional entity compliance enforcement implementation plan that

identifies the reliability standards and requirements to be actively monitored (both those required by NERC and any additional reliability standards the regional entity proposes to monitor), and how each NERC and regional entity identified standard will be monitored, evaluated, reported, sanctioned, and appealed. These implementation plans will be submitted to NERC on the schedule established by NERC, generally on or about November 1 of the preceding year.

21.1 In conjunction with the annual implementation plan, each regional entity with delegated authority must report to NERC regarding how it carried out its delegated enforcement authority in the previous year, the effectiveness of the program, and changes expected to correct any deficiencies identified. Each region will provide its annual report on the schedule established by NERC, generally on or about February 15 of the following year.

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

NERC shall monitor regional entity compliance with NERC reliability standards and, if no there is no delegation agreement in effect with a regional entity for the geographic area, shall monitor bulk power system owners, operators, and users for compliance with NERC reliability standards. Industry experts may be used as appropriate in compliance violation investigations, compliance audits, and other compliance activities, subject to confidentiality, antitrust, and conflict of interest provisions.

1. **NERC Obligations** — NERC compliance enforcement staff shall monitor the compliance of the regional entity with the reliability standards for which the regional entities are responsible. NERC shall actively monitor in its annual Compliance Enforcement and Monitoring Program selected reliability standards that apply to the regional entities. NERC shall evaluate compliance and noncompliance with all of the reliability standards that apply to the regional entities and shall impose sanctions, penalties, or remedial action directives when there is a finding of noncompliance. NERC shall post all violations of reliability standards that apply to the regional entities as described in the reporting and disclosure process in Section 408.

In addition, NERC will directly monitor bulk power system owners, operators, and users for compliance with NERC Reliability Standards in any geographic area for which there is not a delegation agreement in effect with a regional entity. In such cases, NERC will serve as the Compliance Monitor described in the NERC Compliance Monitoring and Enforcement Program document. Compliance matters contested by bulk power system owners, operators, and users in such an event will be heard by the NERC Compliance and Certification Committee.

2. **Mitigation Plans** — An owner, operator or user of the bulk-power system or a regional entity found by NERC to be in noncompliance with a reliability standard shall submit to NERC for approval a mitigation plan with a timeline addressing how the noncompliance will be corrected.

3. **Compliance Audit of the Regional Entity** — NERC shall perform a compliance audit of each regional entity responsible for complying with reliability standards at least once every three years. NERC shall make an evaluation of compliance based on the information obtained through the audit. After due process is complete, the final audit report shall be made public in accordance with the reporting and disclosure process in Section 408.
4. **Appeals Process** — Any regional entity or bulk-power system owner, operator or user found by NERC, as opposed to a regional entity, to be in noncompliance with a reliability standard may appeal the findings of noncompliance with reliability standards and any sanctions, or remedial action directives that are issued by NERC pursuant to the processes described in Sections 409 through 411.

**405. Monitoring of Standards and Other Requirements Applicable to NERC**

The NERC Compliance and Certification Committee shall establish and implement a process to monitor NERC's compliance with the reliability standards that apply to NERC. The process shall use independent monitors with no conflict of interest, real or perceived, in the outcomes of the process. All violations shall be made public according to the reporting and disclosure process in Section 408. The Compliance and Certification Committee will also establish a procedure for monitoring NERC's compliance with its Rules of Procedure for the Standards Development, Compliance Enforcement, and Organization Registration and Certification Programs. Such procedures shall not be used to circumvent the appeals processes established for those programs.

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

NERC shall provide for an independent audit of its compliance monitoring and enforcement program at least once every three years, or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board. The independent audit shall meet the following minimum requirements and any other requirements established by the NERC board.

1. **Effectiveness** — The audit shall evaluate the success and effectiveness of the NERC Compliance Monitoring and Enforcement Program in achieving its mission.
2. **Relationship** — The audit shall evaluate the relationship between NERC and the regional entity compliance enforcement programs and the effectiveness of the programs in ensuring reliability.
3. **Final Report Posting** — The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. **Response to Recommendations** — If the audit report includes recommendations to improve the NERC Compliance Monitoring and Enforcement Program, the administrators of the NERC Compliance Monitoring and Enforcement Program

shall provide a written response and plan to the board within 30 days of the release of the final audit report.

#### **407. Penalties, Sanctions, and Remedial Actions**

1. **NERC Review of Regional Penalties and Sanctions** — NERC shall review all penalties, sanctions, and remedial actions imposed by each regional entity for violations of reliability standards for consistency with similar violations and fairness in application.
2. **Developing Penalties and Sanctions** — The regional entity compliance enforcement program staff shall use the *ERO Sanction Guidelines*, which are incorporated into these rules as **Appendix 4B**, to develop an appropriate penalty, sanction, or remedial action for a violation, and shall notify NERC of the penalty or sanction.
3. **Hearing Processes** — The regional entity shall make available a regional entity hearing process for entities to contest a finding of noncompliance, penalty, sanction, or remedial actions in which the bulk power system owner, operator, or user will be afforded the opportunity to present facts to rebut such a finding, conforming to Attachment 2 of the NERC Compliance Monitoring and Enforcement document. The regional entity shall also make available the NERC appeals process for bulk power system owners, operators, and users seeking an opportunity to dispute a penalty, sanction, or remedial action. Appeals beyond NERC of a finding of noncompliance, penalty, sanction, or remedial action will be before the appropriate ERO governmental authority.
4. **Effective Date of Penalty** — Where authorized by applicable legislation or agreement, no penalty imposed for a violation of a reliability standard shall take effect until the thirty-first day after NERC files, with the applicable ERO governmental authority, a “notice of penalty” and the record of the proceedings in which the violation and penalty were determined, or such other date as ordered by the ERO applicable governmental authority.

#### **408. Reporting and Disclosure Process**

1. **Reporting Requirements** — Each regional entity shall report all known violations, self-reported, confirmed, and alleged, of all reliability standards to NERC in accordance with the requirements established in the NERC Compliance Monitoring and Enforcement Program procedures document. Probable violations from NERC readiness evaluations will be treated as alleged violations when reported by the regional entity to NERC after review by regional entity staff. Each regional entity shall promptly report any change in the status of a violation and the disposition of each violation. Reports on the disposition of a violation will be provided at least quarterly or as otherwise required by NERC for reporting to ERO governmental authorities. NERC shall promptly notify the applicable ERO governmental authority of any self-reported, confirmed, or alleged violation of a reliability standard, any compliance violation investigation, any imposition of a penalty or sanction, or any remedial action directive.

- 1.1 Requirements of reliability standards for which noncompliance may cause bulk power system reliability to be diminished or at risk, will be identified by NERC and require reporting by the regional entity to NERC within 48 hours after the regional entity learns of the violation. Such reports shall include information regarding the nature and reliability impact of the alleged violations, the identity of the organizations involved, and the status and timetable of any compliance investigation. NERC will promptly report such violation to the applicable ERO governmental authority.
2. **Reporting Process** — NERC shall implement and maintain a reporting process and utilize appropriate tools to facilitate reporting of violations. The reporting process shall identify all of the information required to be included in a violation report. NERC will report the disposition of each violation or alleged violation to the applicable ERO governmental authority on a quarterly basis.
3. **Confidential Information** — NERC will treat all alleged violations and matters related to a compliance violation investigation, including the status of the compliance violation investigation, as confidential in accordance with Section 1500. Any entity seeking to protect information as confidential shall follow the procedures of Section 1500. This information may result from compliance violation investigations, compliance audits, and proceedings concerning an alleged violation or proposed penalty or sanction.

Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information in accordance with Section 1500.

  - 3.1 The regional entity and NERC shall give bulk power system owners, operators, and users a reasonable opportunity to demonstrate that information concerning a violation is confidential before such report is disclosed to the public.
  - 3.2 The types of information that will be considered confidential and will not (subject to statutory and regulatory requirements) be disclosed in any public information reported by NERC are identified in Section 1500.
4. **Reporting Updated Information** — Each regional entity and NERC shall report new information on each confirmed or alleged violation as it is received and processed.
5. **Violation Information Review** — NERC staff shall periodically review and analyze all reports of violations to identify trends, chronic violators, and other pertinent reliability issues.
6. **Public Posting** — When the affected bulk power system owner, operator, or user either agrees with the violation(s) or report, or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall publicly post each

confirmed violation, penalty or sanction, and final compliance audit or compliance violation investigation report on its Web site.

- 6.1 Each bulk power system owner, operator, or user may provide NERC with a statement to accompany the violation or report to be posted publicly. The statement must be on company letterhead and include a signature, as well as the name and title of the person submitting the information.
- 6.2 In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information (*NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information* may be used as a guide) or other confidential information shall be redacted in accordance with Section 1500 and not be released publicly.
- 6.3 Subject to redaction of critical energy infrastructure information or other confidential information, for each confirmed violation or settlement relating to an alleged violation, the public posting shall include the name of any relevant entity, the nature, time period, and circumstances of such violation or alleged violation, [any mitigation plan to be implemented by the entity in connection with the confirmed violation or settlement, \[P 56\]](#) and sufficient facts to enable owners, operators and users of the bulk power system to evaluate whether they have engaged in or are engaging in similar activities.

#### **409. Review of NERC Decisions**

1. **Scope of Review** — A registered entity or a regional entity wishing to challenge a finding of noncompliance and the imposition of a penalty for a compliance measure directly administered by NERC, or a regional entity wishing to challenge a regional compliance program audit finding, may do so by filing a notice of the challenge with NERC's director of compliance no later than 21 days after issuance of the notice of finding of violation or audit finding. Appeals by registered entities of decisions of regional entity hearing bodies shall be pursuant to sections 407.3 and 410.
2. **Contents of Notice** — The notice of challenge shall include the full text of the decision that is being challenged, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief.
3. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of challenge, the NERC Director of Compliance may file with the hearing body a response to the issues raised in the notice, with a copy to the regional entity.
4. **Hearing by Compliance and Certification Committee** — The NERC Compliance and Certification Committee shall provide representatives of the

regional entity or registered entity, and the NERC Compliance Monitoring and Enforcement Program an opportunity to be heard and shall decide the matter based upon the filings and presentations made, with a written explanation of its decision.

5. **Appeal** — The regional entity, or registered entity may appeal the decision of the Compliance and Certification Committee by filing a notice of appeal with NERC’s director of compliance no later than 21 days after issuance of the written decision by the Compliance and Certification Committee. The notice of appeal shall include the full text of the written decision of the Compliance and Certification Committee that is being appealed, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not presented to the Compliance and Certification Committee.
6. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of appeal, the NERC Compliance Monitoring and Enforcement Program staff may file its response to the issues raised in the notice of appeal, with a copy to the entity filing the notice.
7. **Reply** — The entity filing the appeal may file a reply within 7 days.
8. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record, the response, and any reply. At its discretion, the Compliance Committee may invite representatives of the regional entity or registered entity, and the NERC Compliance Monitoring and Enforcement Program to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
9. **Impartiality** — No member of the Compliance and Certification Committee or the Board of Trustees Compliance Committee having an actual or perceived conflict of interest in the matter may participate in any aspect of the challenge or appeal except as a party or witness.
10. **Expenses** — Each party in the challenge and appeals processes shall pay its own expenses for each step in the process.
11. **Non-Public Proceedings** — All challenges and appeals shall be closed to the public to protect confidential information.

#### **410. Appeals from Final Decisions of Regional Entities**

1. **Time for Appeal** — An owner, operator or user of the bulk-power system wishing to appeal from a final decision of a regional entity that finds a violation of a reliability standard or imposes a penalty for violation of a reliability standard shall file its notice of appeal with NERC’s director of compliance, with a copy to

the regional entity, no later than 21 days after issuance of the final decision of the regional entity hearing body. The same appeal procedures will apply regardless of whether the matter first arose in a compliance violation investigation, compliance audit or self-report, or in a reliability readiness evaluation.

2. **Contents** — The notice of appeal shall include the full text of the final decision of the regional entity hearing body that is being appealed, a concise statement of the error or errors contained in the final decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not first presented during the compliance hearing before the regional entity hearing body.
3. **Response by Regional Entity** — Within 21 days after receiving a copy of the notice of appeal, the regional entity shall file the entire record of the matter with NERC’s director of compliance, with a copy to the entity filing the notice, together with its response to the issues raised in the notice of appeal.
4. **Reply** — The entity filing the appeal may file a reply to the regional entity within 7 days.
5. **Decision** — The Compliance Committee of the NERC Board of Trustees shall decide the appeal, in writing, based upon the notice of appeal, the record of the matter from the regional entity, the response, and any reply filed with NERC. At its discretion, the Compliance Committee may invite representatives of the entity making the appeal and the regional entity to appear before the Committee. Decisions of the Compliance Committee shall be final, except for further appeal to the applicable ERO governmental authority.
6. **Expenses** — Each party in the appeals process shall pay its own expenses for each step in the process.
7. **Non-Public Proceedings** — All appeals shall be closed to the public to protect confidential information.

#### **411. Hold Harmless**

A condition of invoking the challenge or appeals processes under Section 409 or 410 is that the entity requesting the challenge or appeal agrees that neither NERC (defined to include its members, Board of Trustees, committees, subcommittees, staff and industry volunteers), any person assisting in the challenge or appeals processes, nor any company employing a person assisting in the challenge or appeals processes, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the challenge or appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.



## SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

### 501. Scope of the Organization Registration and Certification Program

Enforcing compliance with the NERC reliability standards requires that the identity of those responsible for complying with the standards be known and that those with primary reliability responsibilities be reviewed and certified as meeting established minimum requirements for performing those tasks. NERC shall develop and maintain a compliance registry and certification program for the purpose of promoting compliance with reliability standards and enhancing the reliability of the bulk power system.

The purpose of the compliance registry will be to clearly identify those entities that are responsible for compliance with reliability standards. Organizations listed on the registry will be responsible for knowing the content of and for complying with the NERC reliability standards. Organizations listed in the registry are not, nor do they become, members of NERC or a regional entity by virtue of being listed in the compliance registry. Membership in NERC is governed by Article II of NERC's bylaws; membership in a regional entity is governed by that entity's bylaws or rules.

Organization registration and certification may be delegated to regional entities in accordance with the procedures in this Section 500, the NERC *Organization Registration and Certification Manual*, which is incorporated into these rules as **Appendix 5**, and approved regional entity delegation agreements or other applicable agreements.

1. **Compliance Registry** — NERC shall establish and maintain a compliance registry of the bulk power system owners, operators, and users that are subject to approved reliability standards.
  - 1.1 The registry shall set forth the identity and functions performed for each organization responsible for meeting requirements of the reliability standards including: reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, transmission service providers, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers. Bulk power system owners, operators, and users shall provide to NERC and the applicable regional entity such information as is necessary to complete the registration.
  - 1.2 NERC and regional entities assisting NERC in the development of the compliance registry shall consider the following factors in determining which organizations should be placed in the registry:
    - 1.2.1 Owners and operators of bulk power system facilities will generally be included in the registry;

- 1.2.2 As identified by regional entities, electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher will be considered part of the bulk power system;
- 1.2.3 Radial transmission facilities serving only load with one transmission source, without more, will not be considered part of the bulk power system;
- 1.2.4 A customer that receives electric service at retail and does not otherwise directly receive, sell, purchase, or transmit power over the bulk power system or own, operate, maintain, or control facilities or systems that are part of the bulk power system will not in general be considered a user of the bulk power system;
- 1.2.5 An entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity's actions or facilities have no material impact on the bulk power system;
- 1.2.6 Notwithstanding the other considerations in this Section 1.2, if the consequences of an entity's actions or inactions could have a material impact on the bulk power system, that entity may be considered a user of the bulk power system;
- 1.2.7 (a) A generation or transmission cooperative, a joint-action agency or another organization (a Joint Registration Organization or JRO) may be registered, in lieu of each of the JRO's members or related entities being registering individually, by the JRO accepting the reliability functions identified in Section 1.1 above, or (b) a JRO and its members or related entities may enter into a written agreement as to which of them will be responsible for one or more reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards, in either case in accordance with the provisions specified in Section 507 (each of (a) and (b), a "joint registration").

For purpose of this Section 501.1.2.7 and Section 507, a "related entity" is an entity whose operations in relation to the operation of the JRO make it feasible for the JRO to accept responsibility for reliability functions for which the related entity would otherwise be responsible. A non-exclusive list of examples of JROs and related entities includes (i) a balancing authority or a transmission provider as the JRO, and (ii) a load-serving entity or a distribution

provider within the balancing authority's control area or receiving transmission services from the transmission provider, as the related entity.

- 1.3 NERC and the regional entities shall use the following procedure for establishing and maintaining the compliance registry:
  - 1.3.1 NERC shall notify each organization of its intent to place the organization on the compliance registry.
  - 1.3.2 Any organization receiving such a notice may challenge the decision to include it on the compliance registry by filing its written objection with NERC's director of compliance within 21 days stating the reasons it believes it should not be considered a bulk power system owner, operator, or user.
  - 1.3.3 The Compliance Committee of the Board of Trustees will promptly issue a written decision on the challenge, including the reasons for the decision.
  - 1.3.4 The decision of the Compliance Committee shall be final unless, within 21 days, the organization appeals the decision to the applicable governmental authority.
  - 1.3.5 At any time a person may recommend in writing, with supporting reasons, to the director of compliance that an organization be added to or removed from the compliance registry.
  - 1.3.6 The compliance registry shall be dynamic and be revised as necessary to take account of changing circumstances. NERC will take such recommendations, and other applicable information, under advisement as it determines whether an entity should be on the compliance registry.
  - 1.3.7 Each entity identified in the registry shall notify NERC and its corresponding regional entity of any changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with such standards.
- 1.4 For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability standards to the fullest extent practical, and (2) there is no duplication of such coverage or of required oversight of such coverage.

In particular the process shall:

- 1.4.1 Ensure that all areas are under the oversight of one and only one reliability coordinator.
- 1.4.2 Ensure that all balancing authorities and transmission operator entities<sup>2</sup> are under the responsibility of one and only one reliability coordinator.
- 1.4.3 Ensure that all transmission elements of the bulk power system are the responsibility and under the control of one and only one transmission planner, planning authority, and transmission operator.
- 1.4.4 Ensure that all loads and generators are under the responsibility and control of one and only one balancing authority.
- 1.5 NERC shall maintain publicly available process documentation.
- 1.6 NERC shall maintain the compliance registry of organizations responsible for meeting the requirements of the reliability standards currently in effect on its Web site and shall update the compliance registry monthly.
2. **Entity Certification** — NERC shall provide for certification of all entities with primary reliability responsibilities requiring certification as established in the NERC reliability standards. The NERC program shall:
  - 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include reliability coordinators, transmission operators, and balancing authorities. Other entities may be added, as required, by approved reliability standards.
  - 2.2 Certify each entity's ability to meet the minimum requirements established by the NERC reliability standards for each function.
  - 2.3 Maintain process documentation.
  - 2.4 Maintain records of currently certified entities.

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<sup>2</sup> Some organizations perform the listed functions (e.g., balancing authority, transmission operator) over areas that transcend the footprints of more than one reliability coordinator. Such organizations will have multiple registrations, with each such registration corresponding to that portion of the organization's overall area that is within the footprint of a particular reliability coordinator.

**3. Delegation and Oversight**

- 3.1 NERC may delegate the responsibilities of registration and certification to regional entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the regional entity or other applicable agreement. The regional entity shall administer an organization registration and certification program to meet NERC's program goals and requirements.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of organization registration and certification within the geographic or electrical boundaries of a regional entity in the event that no entity is certified as a regional entity for that region, or the regional entity withdraws as a regional entity, or does not operate its organization registration and certification program in accordance with delegation agreements and other requirements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee each regional entity registration and certification program that is delegated authority through a delegation agreement or other applicable agreement.
  - 3.3.1 This program shall monitor whether the regional entity carries out its organization registration and certification program in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability of outcomes within each regional entity's certification and registration program and among all of the programs.
  - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in certification audits and periodic reviews of program documents and records.

**502. ERO Organization Registration and Certification Program Requirements**

- 1. NERC shall have final authority in all matters constituting the organization registration and certification program.
  - 1.1 The roles and authority of regional entities in the program are delegated from NERC pursuant to the rules of procedure through regional delegation agreements or other applicable agreements.
  - 1.2 Processes for the program shall be owned by NERC; materials that each regional entity may use to participate in the program may be adapted by that organization subject to prior review and approval by NERC.
  - 1.3 Regional entities participating in the program shall perform their roles and responsibilities to meet NERC's requirements, as specified in the rules of procedure or NERC approved materials, including requirements for

quality, thoroughness, timeliness, accuracy, efficiency, cost-effectiveness, and participation.

- 1.4 Regional entity's decisions to grant or deny certifications shall be subject to NERC review and action, including modification or reversal.
  - 1.5 Regional entity's decisions with respect to the use of the transitional certification processes, as now provided for within the NERC *Organization Registration and Certification Manual (Appendix 5)*, are subject to NERC review and action, including modification or reversal, should NERC deem such review or action warranted.
  - 1.6 Notwithstanding an entity's interest and right to object to the makeup of the certification team that will conduct the review of that entity, NERC, or the regional entity as authorized by NERC, will have final authority on the membership and member roles of that team.
  - 1.7 NERC, or the regional entity as authorized by NERC, shall make all assessments and decisions with respect to all aspects of the organization registration and certification program, including the completeness and accuracy of entities' applications.
2. To ensure consistency and fairness of the program, NERC shall develop procedures to be used by all regional entities in carrying out their organization registration and certification programs, in accordance with the following criteria:
- 2.1 NERC and the regional entities shall have data management processes and procedures that provide for integrity and retention of data and information collected.
  - 2.2 To maintain the integrity of the NERC Organization Registration and Certification Program, NERC, regional entities, certification audit team members, and committee members shall maintain the confidentiality of information provided by entities in order to become registered or certified.
    - 2.2.1 NERC and the regional entities shall have appropriate codes of conduct and confidentiality agreements for staff and other certification audit participants. Individuals not bound by ERO or approved regional entity codes of conduct and who serve on certification-related committees or audit teams shall sign an ERO confidentiality agreement prior to participating on the committee or team.
    - 2.2.2 Staff, committee, and audit team members shall maintain the confidentiality of any certification-related discussions or documents that are designated as confidential (see Section 1500 for types of confidential information). Staff, committee, and audit

team members shall treat as confidential the individual comments expressed during audits and report-drafting sessions.

- 2.2.3 Copies of notes, draft reports, and other interim documents developed or used during a certification audit shall be destroyed after the public posting of a final, uncontested report.
  - 2.2.4 Information deemed by an entity, a regional entity, or NERC as confidential or critical energy infrastructure information shall not be distributed outside of a committee or team, or released publicly.
  - 2.2.5 In the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to immediate dismissal from the audit team and may be prohibited from future participation in compliance program activities by the regional entity or NERC.
  - 2.2.6 NERC shall develop and provide training in auditing skills to all individuals who participate in certification audits. Training for ERO and regional entity personnel, as well as audit team leaders, shall be more comprehensive than training given to industry experts, regional entity members, and volunteers. Training for regional entity members and volunteers may be delegated to the regional entity.
- 2.3 An entity that is determined to be competent to perform a function after completing all certification requirements shall be deemed certified by NERC to perform that function.
- 2.3.1 An entity deemed certified by NERC to perform a function shall be considered and may be referred to, for example, as a certified transmission operator, certified balancing authority, or certified reliability coordinator. Only entities that have received such certifications from NERC shall be so designated.
  - 2.3.2 NERC shall award certification to an entity only after it has demonstrated full competency to all certification requirements. An entity shall be awarded certification only for each function for which it has demonstrated full competency

### **503. Regional Entity Implementation of Organization Registration and Certification Program Requirements**

1. **Delegation** — Recognizing the regional entity's knowledge of and experience with their members, NERC may delegate responsibility for organization

registration and certification to the regional entity through a delegation agreement or such responsibilities may be established through another applicable agreement.

2. **Registration** — The following organization registration activities shall be performed by the regional entity in accordance with the NERC Organization Registration and Certification Procedures, which are incorporated into the Rules of Procedure as **Appendix 5**.
  - 2.1 Entities seeking registration shall contact the regional entity in which they operate to become registered and, if necessary, certified.
  - 2.2 Regional entities shall verify that all balancing authorities and transmission operators are under the responsibility of one and only one reliability coordinator.
  - 2.3 Regional entities shall verify that all transmission elements of the bulk power system operated within their geographic boundaries are under the authority and control of one and only one transmission planner, planning authority, transmission owner, and transmission operator.
  - 2.4 Regional entities shall verify that all loads and generation sources within their geographic boundaries are under the authority and control of one and only one balancing authority.
  - 2.5 Regional entities shall verify that no geographical or electrical areas of the bulk power system within their boundaries have duplication of coverage or are lacking an entity to perform required duties and tasks as identified in the reliability standards.
3. **Certification** — The following organization certification activities shall be performed by the regional entity in accordance with an approved ERO delegation agreement or another applicable agreement:
  - 3.1 Entities seeking certification to perform one of the functions requiring certification shall contact the regional entity for the region(s) in which they operate to apply for certification. NERC shall have oversight of the regional entity's certification activities and processes.
  - 3.2 Entities seeking certification and other affected operators shall provide all information and data requested by NERC or the regional entity to conduct the certification process, in accordance with 18 C.F.R. Section 39.2 in the United States.
  - 3.3 Regional entities shall contact entities directly and provide notice of the requirement to be certified by NERC and initiate the process to certify any entities that do not voluntarily contact the regional entity or NERC.



- 3.4 Regional entities shall notify NERC of all certification applicants, including those not voluntarily seeking certification.
- 3.5 The regional entity shall establish certification procedures to include audit processes, schedules and deadlines, expectations of the applicants and all entities participating in the audit and certification processes, and requirements for certification auditors.
  - 3.5.1 The regional entity certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (and requesting a demonstration of all tools identified in the certification standard), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the certification standard), reviewing certification documents and projected system operator work schedules, and reviewing any additional documentation that is needed to support the completed questionnaire or inquiries arising during the site visit.
  - 3.5.2 All industry experts and regional members participating in certification audits shall successfully complete appropriate training provided by NERC or the regional entity prior to performing an audit.
  - 3.5.3 The regional entity certification procedures will provide for preparation of a written report by the audit team detailing any deficiencies that must be resolved prior to certification along with any other recommendations for consideration by the entity, the regional entity, or NERC.
  - 3.5.4 The regional entity shall evaluate the competency of entities requiring certification to meet the minimum requirements established by the standards for each such function based on the requirements established by NERC.

#### **504. Appeals**

- 1. NERC shall maintain an appeals process to resolve any disputes related to registration or certification activities (*Organization Registration and Certification Manual — Appendix 5*).
- 2. Each regional entity with delegated responsibilities shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The regional entity appeals process shall culminate with the regional board or a committee established by and reporting to the board as the final adjudicator, provided that: (1) in ERCOT, the Public Utility Commission of Texas may act as the final adjudicator, and (2) where applicable, Canadian provincial governmental

authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings.

**505. Program Maintenance**

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the organization registration and certification program.

**506. Independent Audit of NERC Organization Certification Program**

1. NERC shall provide for an independent audit of its organization certification program at least once every three years, or more frequently, as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC organization certification program in achieving its mission.
3. The final report shall be posted by NERC for public viewing according to the reporting and disclosure process in Section 408.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.

**507. Provisions Relating to Joint Registrations and Joint Registration Organizations**

1. **Registration by a JRO.** In addition to registering as the entity responsible for all functions that a JRO performs itself, a JRO may register on behalf of one or more of its members or related entities for one or more functions as to which such members or related entities would otherwise be required to register, and thereby accept on behalf of such members or related entities all compliance responsibility, including reporting requirements, for all requirements of reliability standards applicable to the function or functions for which the JRO has registered on behalf of its members or related entities. Any entity seeking to register as a JRO for any or all requirements identified in the reliability standards that would otherwise be the responsibility of one or more of its members or related entities shall provide to the applicable regional entity information, in the form requested by the regional entity, sufficient to identify whether the entity or its member(s) or related entities will be responsible for compliance with each provision of the reliability standards for the applicable functional responsibilities covered by the joint registration. The JRO must identify its primary compliance contact. The JRO primary compliance contact is responsible for providing all of the information and data, including submitting reports, as needed by the regional entity for performing assessments of compliance.
2. **Joint registration pursuant to written agreement.** Where a JRO and any of its members or related entities agree, in writing, upon a division of compliance responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular

reliability standard(s), both the JRO and such member(s) or related entit(ies) shall register as an organization responsible for that function. The JRO and its member(s) or related entit(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration. Neither NERC nor the regional entity shall be parties to any such agreement between a JRO and its member or related entit(ies), nor shall NERC or the regional entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the joint registration.

3. NERC or the regional entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the JRO and its member(s) or related entit(ies), and may request such additional information as NERC or the regional entity deems appropriate.
4. The regional entity shall notify NERC of each joint registration that the regional entity accepts. The regional entity's acceptance of a joint registration shall be a representation by the regional entity to NERC that the regional entity has concluded the joint registration will result in (1) no areas lacking any entities to perform the duties and tasks identified in and required by the reliability standards, and (2) no unnecessary duplication of such coverage of areas by entities to perform the duties and task identified in and required by the reliability standards or of required oversight of such coverage.
5. NERC shall maintain, and shall post on its web site, a Joint Registration Organization registry listing all joint registrations that have been accepted by NERC or by a regional entity and the reliability standards or requirements thereof for which each JRO and each of its members or related entities is responsible under the joint registration. The postings on NERC's web site shall clearly identify the compliance responsibilities of the JRO and of each of its member(s) or related entit(ies). Such postings are intended to enable reliability coordinators and other system operators to be fully aware of responsibilities and chains of command in order to respond quickly and decisively to system operation events.
6. Annually following submission of a joint registration, the JRO shall provide the regional entity with a list, in a form specified by the regional entity, that identifies the members or related entities and the functions for which the JRO has registered on behalf of such members or related entities and for which the JRO assumes compliance responsibility. Additionally, a JRO shall provide a revised list of compliance responsibilities to the regional entity each time the JRO accepts additional compliance responsibilities for a member or related entity or for a new member or related entity and each time that any compliance reliability reverts from the JRO to a member or related entity. The regional entity shall promptly notify NERC of each such revision.
7. In the event of a violation of a reliability standard or of a requirement of a reliability standard, the JRO or its member or related entity identified in the Joint

Registration Organization registry as responsible for such reliability standard or requirement shall be identified in the notice of alleged violation and shall be assessed the sanction or penalty for the violation. In accordance with the NERC *Sanctions Guidelines*, for a violation that is attributable to a member or related entity that is registered under the joint registration, the penalty or sanction imposed for the violation will bear reasonable relation to the violation as incurred by that member or related entity and not the JRO. In the event a regional entity is not able to determine, based on the joint registration and the annual or other revised list submitted by the JRO, which entity is responsible for a particular reliability standard or requirement thereof that has been violated, the regional entity shall issue the notice of alleged violation to, and shall impose any sanction or penalty on, the JRO. NERC and the regional entity shall have no responsibility for any allocation or collection of penalties or sanctions between or among the JRO and its member(s) or related entit(ies).

- 8. Individual member registration.** Nothing in this Section 507 shall preclude a member of a JRO, a related entity, or any other entity, from registering on its own behalf and undertaking full compliance responsibility, including reporting requirements, for the reliability standards applicable to the function(s) for which the member or other entity is registering. A JRO member or related entity that registers as responsible for any reliability standard or requirement of a reliability standards shall inform the JRO of its registration.

## SECTION 600 — PERSONNEL CERTIFICATION

### 601. Scope of Personnel Certification

Maintaining the reliability of the bulk electric system through implementation of the reliability standards requires skilled, trained and qualified system operators. The System Operator Certification Program provides the mechanism to ensure system operators are provided the education and training necessary to obtain the essential knowledge and skills and are therefore qualified to operate the bulk electric system. NERC, as the ERO, will ensure skilled, trained, and qualified system operators through the System Operator Certification Program.

NERC shall develop and maintain a personnel certification program to evaluate individuals and to issue credentials to individuals who demonstrate the required level of competence. A current version of such a program is the *System Operator Certification Program Manual*, which is incorporated into these rules as **Appendix 6**.

### 602. Structure of ERO Personnel Certification Program

1. The NERC personnel certification program shall be international in scope.
2. The personnel certification program shall have a governing body that (1) is able to independently exercise decision-making for all matters pertaining to certification, (2) includes individuals from the discipline being certified and whose composition addresses the needs of the users of the program (e.g., employers, regulators, etc.), and (3) has representation for each specialty or level within a discipline.
3. NERC shall maintain a nominating process for membership in the governing body. Nominations shall be open to all interested parties and self-nominations shall be accepted. The NERC Board of Trustees shall appoint members to the governing body from among those nominated. The members of the governing body shall serve at the pleasure of the board.
4. The personnel certification program governing body shall have control over the matters related to the personnel certification and recertification programs listed below, without being subject to approval by any other body.
  - 4.1 Policies and procedures, including eligibility requirements and application processing.
  - 4.2 Requirements for personnel certification, maintaining certification, and recertification.
  - 4.3 Examination content, development, and administration.
  - 4.4 Examination cut score.
  - 4.5 Grievance and disciplinary processes.

- 4.6 Governing body and subgroup(s)' meeting rules including agenda, frequency, and related procedures.
  - 4.7 Subgroup(s) appointments and work assignments.
  - 4.8 Publications about personnel certification and recertification.
  - 4.9 Setting fees for application, and all other services provided as a part of the personnel certification and recertification activities.
  - 4.10 Program funding, spending, and budget authority. Financial matters related to the operation of the program shall be segregated from other NERC activities.
5. The personnel certification program shall utilize written procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors.
  6. The personnel certification program shall be separate from the accreditation and education functions of NERC in related disciplines.
  7. No member of the personnel certification program governing body or staff member working with the personnel certification program governing body shall have or exercise any authority or responsibility for compliance matters related to reliability standards concerning personnel certification.

**603. Candidate Testing Mechanisms**

1. The personnel certification program shall utilize reliable testing mechanisms to evaluate individual competence in a manner that is objective, fair to all candidates, job-related, and based on the knowledge and skill needed to function in the discipline.
2. The personnel certification program shall implement a formal policy of periodic review of the testing mechanisms to ensure ongoing relevance of the mechanisms to knowledge and skill needed in the discipline.
3. The personnel certification program shall utilize policies and procedures to ensure that all test administration and development materials are secure and demonstrate that these policies and procedures are consistently implemented.
4. The personnel certification program shall establish pass/fail levels that protect the public with a method that is based on competence and generally accepted in the psychometric community as being fair and reasonable.
5. The personnel certification program shall conduct ongoing studies to substantiate the reliability and validity of the testing mechanisms.

6. The personnel certification program shall utilize policies and procedures that govern how long examination records are kept in their original format.
7. The personnel certification program shall demonstrate that different forms of the testing mechanisms assess equivalent content and that candidates are not penalized for taking forms of varying difficulty.

**604. Public Information About the Personnel Certification Program**

1. The personnel certification program shall provide for publishing and availability of general descriptive material on the procedures used in examination construction and validation; all eligibility requirements and determination; fees; and examination administration documents, including: reporting of results, recertification requirements, and disciplinary and grievance procedures.
2. The personnel certification program shall publish and make available a comprehensive summary or outline of the information, knowledge, or functions covered by the examination.
3. The personnel certification program shall publish and make available at least annually a summary of certification activities for the program, including at least the following information: number of examinations delivered, the number passed, the number failed, and the number certified.

**605. Responsibilities to Applicants for Certification or Recertification**

The personnel certification program:

1. Shall not discriminate among applicants as to age, gender, race, religion, national origin, disability, or marital status and shall include a statement of non-discrimination in announcements of the program.
2. Shall comply with all requirements of applicable federal and state/provincial laws with respect to all certification and recertification activities, and shall require compliance of all contractors and/or providers of services.
3. Shall make available to all applicants copies of formalized procedures for application for, and attainment of, personnel certification and recertification and shall uniformly follow and enforce such procedures for all applicants.
4. Shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.
5. Shall provide competently proctored examination sites.
6. Shall uniformly report examination results to applicants in a timely manner.
7. Shall give applicants failing the examination information on general content areas of deficiency.

8. Shall implement policies and procedures providing due process for applicants questioning eligibility determination, examination results, and certification status, and shall publish this information. A current version of such a procedure is the *NERC System Operator Certification Dispute Resolution Process*, which is incorporated into these rules as part of **Appendix 6**.
9. Shall develop and maintain a program manual containing the processes and procedures for applicants for certification and recertification.

**606. Responsibilities to the Public and to Employers of Certified Practitioners**

The personnel certification program:

1. Shall demonstrate that the testing mechanisms adequately measure the knowledge and skill required for entry, maintenance, and/or advancement in the profession for each position to be certified.
2. Shall award certification and recertification only after the skill and knowledge of the individual have been evaluated and determined to be acceptable.
3. Shall periodically publish or maintain, in an electronic format, a current list of those persons certified in the programs and have policies and procedures that delineate what information about a credential holder may be made public and under what circumstances.
4. Shall have formal policies and procedures for discipline of a credential holder, including the revocation of the certificate, for conduct deemed harmful to the public or inappropriate to the discipline (e.g., incompetence, unethical behavior, physical or mental impairment affecting performance). These procedures shall incorporate due process. The current procedure is the *NERC Certified System Operator Credential Disciplinary Action Procedure*, which is incorporated into these rules as part of **Appendix 6**.
5. Shall demonstrate that any title or credential awarded accurately reflects or applies to the practitioner's daily occupational or professional duties and is not confusing to employers, consumers, regulators, related professions, and/or other interested parties.



## **SECTION 700 — RELIABILITY READINESS EVALUATION AND IMPROVEMENT**

### **701. Scope of the Reliability Readiness Evaluation and Improvement Program**

The readiness evaluations are designed to ensure that operators of the bulk electric system have the facilities, tools, processes, and procedures in place to operate reliably under future conditions. The evaluations help balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators recognize and assess their reliability responsibilities and evaluate how their operations support those responsibilities. The evaluation team may also evaluate transmission planner and transmission owner functions in concert with the evaluation of reliability coordinators, balancing authorities, and transmission operators. NERC uses the results of these evaluations to champion the changes required to improve the reliability performance of these entities and achieve excellence in the assigned reliability functions and responsibilities. A companion goal of the program is to identify and promote examples of excellence within the industry.

Monitoring compliance with reliability standards provides only a historical perspective by determining if a registered entity has complied with the NERC reliability standards over some prescribed period in the past. An effective ERO will also recognize that monitoring compliance absent a system emergency or disturbance does not effectively preserve reliability or ensure the ability to perform and achieve excellence during a system emergency or disturbance.

NERC identifies those entities with primary reliability responsibilities and provides guidance to help them achieve operational excellence through the Reliability Readiness Evaluation and Improvement Program. This program recognizes that standards cannot prescribe all aspects of reliable operations and that NERC standards present a threshold, not a target, for performance and excellence in the industry. Balancing authorities, transmission operators, reliability coordinators, and others that provide support to these operators must be ready to perform under emergency conditions while striving for excellence in their assigned reliability functions and responsibilities.

NERC maintains a reliability readiness evaluation and improvement program for the purpose of promoting compliance with reliability standards and enhancing the reliability of the bulk power system. The program assesses the reliability readiness of reliability coordinators, balancing authorities, transmission operators, and others performing delegated tasks for these operators to operate the bulk power system reliably, and to identify opportunities for improvement. NERC may also create sector forums (see section 712) to enhance the reliability of the bulk power system by providing a mechanism for members of a particular industry sector, using peer review and mutual assistance, to identify best practices in the safety and reliability of the bulk power system, to disseminate lessons learned from disturbances, near misses, and other events, and to encourage all members of the sector to implement those practices and lessons on a timely basis. The Reliability Readiness Evaluation and Improvement Program will coordinate with the sector forums as appropriate to provide input from the readiness evaluations.

**702. Structure of the Reliability Readiness Evaluation and Improvement Program**

1. NERC shall have overall responsibility for coordinating readiness evaluations in accordance with the NERC *Readiness Evaluation Procedure*, the current version of which is incorporated into these rules as **Appendix 7**. These rules of procedure take precedence for any conflicts or inconsistencies that exist with the NERC *Readiness Evaluation Procedure*.
2. NERC staff shall have the primary responsibility for executing the following procedural steps: (1) development of the overall schedule in conjunction with the appropriate regional entity to coordinate evaluation activities; (2) initiation of the evaluation process for each entity; (3) provision of evaluation questionnaires, processes, data requests, documentation, and criteria; (4) identification of readiness evaluation team members; (5) coordination of evaluated entity and neighboring entity questionnaires; and (6) publication of findings.
3. The NERC evaluation team shall perform the following functions: (1) review the entity's questionnaire responses and documentation and research any issues or events identified; (2) perform the on-site evaluations; and (3) prepare a report of findings.

**703. Scheduling of Readiness Evaluations**

1. NERC staff in conjunction with the regional entities shall prepare a three-year cycle of readiness evaluations that will be updated annually by a date specified by NERC.
2. NERC shall obtain from the regional entity the identity of a contact person at each entity to be evaluated.
3. Readiness evaluations and compliance audits shall be conducted with separate processes, but may occur concurrently if separate personnel are used.

**704. Resources for Readiness Evaluations**

1. NERC shall select an evaluation team in advance of each evaluation according to a schedule specified by NERC.
2. The evaluation team shall consist of members possessing expertise and experience specified by NERC.
3. The evaluation team shall be of a size and composition specified by NERC.
4. If an entity to be evaluated raises an objection to an evaluation team member's participation, it must do so in writing to NERC stating clearly the basis for the objection. Upon receipt of such objection, the Director of NERC's Readiness Evaluation and Improvement program will attempt to resolve the issue to the mutual agreement of the entity being evaluated and the individual and/or entity for whom the individual is employed, utilizing guidance from the regional entities

as appropriate.

If this process does not result in a mutually acceptable agreement, the Director will resolve the objection based on the following factors:

- a. Team member was previously employed by entity to be evaluated within the previous three years;
  - b. Team member was previously employed by entity to be evaluated and whose employment ended unfavorably;
  - c. Team member is in active litigation with the entity to be evaluated;
  - d. Team member has a direct financial interest in the entity to be evaluated;
  - e. Team member is employed in a company under the same corporate umbrella as the entity to be evaluated;
  - f. The team member's employer and the entity to be evaluated are engaged in active litigation; and
  - g. Other matters that may interfere with the exercise of independent judgment.
5. NERC shall develop and provide training in evaluation skills to all individuals who participate in readiness evaluations. Training for NERC evaluation team leaders and regional entity personnel shall be more comprehensive than training given to industry experts and regional members.
  6. All team members and observers shall sign and abide by a NERC confidentiality agreement prior to participating in any of the evaluation activities unless bound by NERC or other codes of conduct acknowledged by NERC to be acceptable. Copies of the signed confidentiality agreements shall be maintained by NERC and be available upon request by the evaluated entity.
  7. To maintain the focus and size of the evaluation team, the use of observers will be limited. Observers must be expressly agreed upon by both NERC and the entity being evaluated. The role of observers is limited to observing the process. Observers shall not participate in the creation and editing of the report or its findings, or interfere with the evaluation process. The team leader may remove any observer from the evaluation who is not abiding by these criteria.

#### **705. Pre-Readiness Evaluation Activities**

NERC will require certain information to perform readiness evaluations of operating entities. These entities shall provide to NERC such information as is necessary to conduct the readiness evaluations.

1. Prior to an evaluation, NERC shall provide the entity a request for information and a questionnaire. The entity shall return the requested information and the completed questionnaire according to a schedule specified by NERC. In its

submission to the request for information, the entity to be evaluated shall identify all tasks that have been delegated to another entity.

2. NERC shall provide a questionnaire to neighboring operating entities with which the evaluated entity routinely interacts. The neighboring operating entities shall return the completed questionnaires within a period of time specified by NERC.
3. Prior to the evaluation, NERC shall provide an evaluation agenda to the entity to be evaluated.
4. The evaluation team will receive the following information upon receipt of a signed confidentiality agreement according to a schedule specified by NERC.
  - a. The evaluated entity's completed questionnaire and supporting documentation;
  - b. The neighboring operating entities' completed questionnaires; and
  - c. The on-site agenda.
5. The evaluation team will coordinate before the on-site evaluation begins to review questionnaire responses, identify areas requiring further investigation, discuss concerns, coordinate the interview process, and assign responsibilities during the on-site visit.

#### **706. On-Site Activities for the Readiness Evaluation**

1. The evaluation team will meet on-site for a period defined by NERC to conduct the readiness evaluation according to the agenda provided in advance. The team will conduct interviews with personnel, review documentation, and make observations about the entity's tools, facilities, and processes.
2. The team's findings shall be based on data collected from the entity's questionnaire and documentation, neighboring operating entities' questionnaires, and observations and information collected during the on-site visit.
3. Evidence of possible noncompliance with a reliability standard shall be reported to NERC and to the applicable regional entity for resolution through the applicable Compliance Monitoring and Enforcement Program. If the issue is judged to be an immediate threat to reliability, the notification to NERC and the regional entity shall be made within 24 hours of discovery. Possible noncompliance with a NERC reliability standard will not be identified in the readiness evaluation report.
4. Upon completion of the on-site evaluation, the team shall make a presentation to the evaluated entity of preliminary findings and recommendations that will be included in the final report.

**707. Preparation and Posting of the Final Report**

1. The evaluation team leaders shall prepare a draft report. The report will be sent to the team for review, within a period of time after the evaluation specified by NERC.
2. The evaluation team shall have a period of time specified by NERC to respond to the draft report. If a team member does not respond within the allotted time, such non-response shall be considered agreement with the contents of the report.
3. The draft report shall then be sent to the evaluated entity for its review to ensure that there are no factual errors in the report. The entity shall respond within a period of time specified by NERC. If the entity does not respond within the specified time, such non-response shall be considered agreement with the content of the report. The entity may provide feedback in the form of corrections and clarifications that will be considered by the evaluation team for inclusion in the final report.
4. After agreeing on any final corrections, the evaluation team may elect to provide the evaluated entity the opportunity to review the changes if deemed significant. The team shall then post the final report on the NERC Web site within a period of time from the on-site evaluation specified by NERC. Information deemed to be confidential information shall be redacted prior to posting. The entity will make the determination about what information will be redacted.
5. Should the entity wish to provide comments regarding the final report, evaluation processes, or findings, the entity may provide a statement in writing that will be posted on the NERC Web site in conjunction with the final report.
6. In response to the posted evaluation report and within a period of time after the posting specified by NERC, the entity shall provide a response plan to NERC addressing the report recommendations, including a timeline for implementation. The response plan shall be published on the NERC Web site when submitted by the entity. If the entity requests, NERC will offer assistance in developing a suitable response plan to address the report's recommendations. The entity shall notify NERC of its request for assistance.
7. NERC may direct that a mid-cycle follow-up evaluation be scheduled

**708. Monitoring Recommendation Implementation**

1. Evaluated entities may implement actions based on the recommendation or may review the recommendation and determine that no action is warranted or necessary and provide documentation on their decisions as well as the response plan.
2. NERC shall monitor the evaluated entity's implementation of the recommendations in the final report and the entity's response plan, and shall

report progress to the board. NERC may elect to use the regional entities to coordinate the request for updated recommendation status for members within its area of oversight.

**709. Examples of Excellence**

NERC shall identify and publish examples of excellence identified during the course of readiness evaluations. “Examples of excellence” are practices utilized by owners, operators and users of the bulk power system that are identified as being exceptionally effective in ensuring and protecting the reliability of the bulk power system. These “examples of excellence” may be identified through a readiness evaluation or submitted to NERC for an on-site evaluation.

**710. Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members**

1. All information made available or created during the course of the evaluation including, but not limited to, data, documents, observations and notes, shall be maintained as confidential by all evaluation team members, in accordance with the requirements of Section 1500.
2. Evaluation team members are obligated to destroy all confidential evaluation notes following the posting of the final report.
3. NERC will retain evaluation-related documentation, notes, and materials for a period of time as defined by NERC.

**711. Independent Audit of the Reliability Readiness Evaluation and Improvement Program**

1. NERC shall provide for an independent audit of its reliability readiness evaluation and improvement program at least once every three years or more frequently as determined by the board. The audit shall be conducted by independent expert auditors as selected by the board.
2. The audit shall evaluate the success and effectiveness of the NERC reliability readiness evaluation and improvement program in achieving its mission.
3. If the audit report includes recommendations to improve the reliability readiness evaluation and improvement program, the administrators of the program shall provide a written response and plan to the board within 30 days of the final report.
4. The final report shall be posted by NERC for public viewing on its Web site. Confidential information shall be redacted according to NERC procedures and not released publicly.

**712. Formation of Sector Forum**

1. NERC will form a sector forum at the request of any five members of NERC that share a common interest in the safety and reliability of the bulk power system.

The members of sector forum may invite such others of the members of NERC to join the sector forum as the sector forum deems appropriate.

2. The request to form a sector forum must include a proposed charter for the sector forum. The board must approve the charter.
3. NERC will provide notification of the formation of a sector forum to its membership roster. Notices and agendas of meetings shall be posted on NERC's Web site.
4. A sector forum may make recommendations to any of the NERC committees and may submit a standards authorization request to the NERC *Reliability Standards Development Procedure*.

## **SECTION 800 — RELIABILITY ASSESSMENT AND PERFORMANCE ANALYSIS**

### **801. Objectives of the Reliability Assessment and Performance Analysis Program**

The objectives of the NERC reliability assessment and performance analysis program are to: (1) conduct, and report the results of, an independent assessment of the overall reliability and adequacy of the interconnected North American bulk power systems, both as existing and as planned; (2) analyze off-normal events on the bulk power system; (3) identify the root causes of events that may be precursors of potentially more serious events; (4) assess past reliability performance for lessons learned; (5) disseminate findings and lessons learned to the electric industry to improve reliability performance; and (6) develop reliability performance benchmarks. The final reliability assessment reports shall be approved by the board for publication to the electric industry and the general public.

### **802. Scope of the Reliability Assessment Program**

1. The scope of the reliability assessment program shall include:
  - 1.1 Review, assess, and report on the overall electric generation and transmission reliability (adequacy and operating reliability) of the interconnected bulk power systems, both existing and as planned.
  - 1.2 Assess and report on the key issues, risks, and uncertainties that affect or have the potential to affect the reliability of existing and future electric supply and transmission.
  - 1.3 Review, analyze, and report on regional self-assessments of electric supply and bulk power transmission reliability, including reliability issues of specific regional concern.
  - 1.4 Identify, analyze, and project trends in electric customer demand, supply, and transmission and their impacts on bulk power system reliability.
  - 1.5 Investigate, assess, and report on the potential impacts of new and evolving electricity market practices, new or proposed regulatory procedures, and new or proposed legislation (e.g. environmental requirements) on the adequacy and operating reliability of the bulk power systems.
2. The reliability assessment program shall be performed in a manner consistent with the reliability standards of NERC including but not limited to those that specify reliability assessment requirements.



### **803. Reliability Assessment Reports**

The number and type of periodic assessments that are to be conducted shall be at the discretion of NERC. The results of the reliability assessments shall be documented in three reports: the long-term and the annual seasonal (summer) and the annual seasonal (winter) assessment reports. NERC shall also conduct special reliability assessments from time to time as circumstances warrant. The reliability assessment reports shall be reviewed and approved for publication by the board. The three regular reports are described below.

1. **Long-Term Reliability Assessment Report** — The annual long-term report shall cover a ten-year planning horizon. The planning horizon of the long-term reliability assessment report shall be subject to change at the discretion of NERC. Detailed generation and transmission adequacy assessments shall be conducted for the first five years of the review period. For the second five years of the review period, the assessment shall focus on the identification, analysis, and projection of trends in peak demand, electric supply, and transmission adequacy, as well as other industry trends and developments that may impact future electric system reliability. Reliability issues of concern and their potential impacts shall be presented along with any mitigation plans or alternatives. The long-term reliability assessment reports will generally be published in the fall (September) of each year. NERC will also publish electricity supply and demand data associated with the long-term reliability assessment report.
2. **Summer Assessment Report** — The annual summer seasonal assessment report typically shall cover the four-month (June–September) summer period. It shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected summer peak demands. It shall also identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may include possible mitigation alternatives. The report will generally be published in mid-May for the upcoming summer period.
3. **Winter Assessment Report** — The annual winter seasonal assessment report shall cover the three-month (December–February) winter period. The report shall provide an overall perspective on the adequacy of the generation resources and the transmission systems necessary to meet projected winter peak demands. Similar to the summer assessment, the winter assessment shall identify reliability issues of interest and regional and subregional areas of concern in meeting projected customer demands and may also include possible mitigation alternatives. The winter assessment report will generally be published in mid-November for the upcoming winter period.
4. **Special Reliability Assessment Reports** — In addition to the long-term and seasonal reliability assessment reports, NERC shall also conduct special reliability assessments on a regional, interregional, and interconnection basis as conditions warrant, or as requested by the board or applicable governmental authorities. The teams of reliability and technical experts also may initiate special assessments of

key reliability issues and their impacts on the reliability of a regions, subregions, or interconnection (or a portion thereof). Such special reliability assessments may include, among other things, operational reliability assessments, evaluations of emergency response preparedness, adequacy of fuel supply, hydro conditions, reliability impacts of new or proposed environmental rules and regulations, and reliability impacts of new or proposed legislation that affects or has the potential to affect the reliability of the interconnected bulk power systems in North America.

#### **804. Reliability Assessment Data and Information Requirements**

To carry out the reviews and assessments of the overall reliability of the interconnected bulk power systems, the regional entities and other entities shall provide sufficient data and other information requested by NERC in support of the annual long-term and seasonal assessments and any special reliability assessments.

Some of the data provided for these reviews and assessment may be considered confidential from a competitive marketing perspective, a critical energy infrastructure information perspective, or for other purposes. Such data shall be treated in accordance with the provisions of Section 1500 – Confidential Information.

While the major sources of data and information for this program are the regional entities, a team of reliability and technical experts is responsible for developing and formulating its own independent conclusions about the near-term and long-term reliability of the bulk power systems.

In connection with the reliability assessment reports, requests shall be submitted to each of the regional entities for required reliability assessment data and other information, and for each region’s self-assessment report. The timing of the requests will be governed by the schedule for the preparation of the assessment reports.

The regional self-assessments are to be conducted in compliance with NERC standards and the respective regional planning criteria. The team(s) of reliability and technical experts shall also conduct interviews with the regional entities as needed. The summary of the regional self-assessments that are to be included in the assessment reports shall follow the general outline identified in NERC’s request. This outline may change from time to time as key reliability issues change.

In general, the regional reliability self-assessments shall address, among other areas, the following topics: demand and net energy for load; assessment of projected resource adequacy; any transmission constraints that may impact bulk transmission adequacy and plans to alleviate those constraints; any unusual operating conditions that could impact reliability for the assessment period; fuel supply adequacy; the deliverability of generation (both internal and external) to load; and any other reliability issues in the region and their potential impacts on the reliability of the bulk power systems.

### **805. Reliability Assessment Process**

Based on their expertise, the review of the collected data, the review of the regional self-assessment reports, and interviews with the regional entities, as appropriate, the teams of reliability and technical experts shall perform an independent review and assessment of the generation and transmission adequacy of each region's existing and planned bulk power system. The results of the review teams shall form the basis of NERC's long-term and seasonal reliability assessment reports. The review and assessment process is briefly summarized below.

1. **Resource Adequacy Assessment** — The teams shall evaluate the regional demand and resource capacity data for completeness in the context of the overall resource capacity needs of the region. The team shall independently evaluate the ability of the regional entity members to serve their obligations given the demand growth projections, the amount of existing and planned capacity, including committed and uncommitted capacity, contracted capacity, or capacity outside of the region. If the region relies on capacity from outside of the region to meet its resource objectives, the ability to deliver that capacity shall be factored into the assessment. The demand and resource capacity information shall be compared to the resource adequacy requirements of the regional entity for the year(s) or season(s) being assessed. The assessment shall determine if the resource information submitted represents a reasonable and attainable plan for the regional entity and its members. For cases of inadequate capacity or reserve margin, the regional entity will be requested to analyze and explain any resource capacity inadequacies and its plans to mitigate the reliability impact of the potential inadequacies. The analysis may be expanded to include surrounding areas. If the expanded analysis indicates further inadequacies, then an interregional problem may exist and will be explored with the applicable regions. The results of these analyses shall be described in the assessment report.
2. **Transmission Adequacy and Operating Reliability Assessment** — The teams shall evaluate transmission system information that relates to the adequacy and operating reliability of the regional transmission system. That information shall include: regional planning study reports, interregional planning study reports, and/or regional operational study reports. If additional information is required, another data request shall be sent to the regional entity. The assessment shall provide a judgment on the ability of the regional transmission system to operate reliably under the expected range of operating conditions over the assessment period as required by NERC reliability standards. If sub-areas of the regional system are especially critical to the reliable operation of the regional bulk transmission system, these facilities or sub-areas shall be reviewed and addressed in the assessment. Any areas of concern related to the adequacy or operating reliability of the system shall be identified and reported in the assessment.
3. **Seasonal Operating Reliability Assessment** — The team(s) shall evaluate the overall operating reliability of the regional bulk transmission systems. In areas with potential resource adequacy or system operating reliability problems, operational readiness of the affected regional entities for the upcoming season

shall be reviewed and analyzed. The assessment may consider unusual but possible operating scenarios and how the system is expected to perform. Operating reliability shall take into account a wide range of activities, all of which should reinforce the regional entity's ability to deal with the situations that might occur during the upcoming season. Typical activities in the assessment may include: facility modifications and additions, new or modified operating procedures, emergency procedures enhancement, and planning and operating studies. The teams shall report the overall seasonal operating reliability of the regional transmission systems in the annual summer and winter assessment reports.

4. **Reporting of Reliability Assessment Results** — The teams of reliability and technical experts shall provide an independent assessment of the reliability of the regional entities and the North American interconnected bulk power system for the period of the assessment. While the regional entities are relied upon to provide the information to perform such assessments, the review team is not required to accept the conclusions provided by the regional entities. Instead, the review team is expected, based on their expertise, to reach their own independent conclusions about the status of the adequacy of the generation and bulk power transmission systems of North America.

The review team also shall strive to achieve consensus in their assessments. The assessments that are made are based on the best information available at the time. However, since judgment is applied to this information, legitimate differences of opinion can develop. Despite these differences, the review team shall work to achieve consensus on their findings.

In addition to providing long-term and seasonal assessments in connection with the reliability assessment program, the review team of experts shall also be responsible for recommending new and revised reliability standards related to the reliability assessments and the reliability of the bulk power systems. These proposals for new or revised standards shall be entered into NERC's Standards Development Process.

Upon completion of the assessment, the team shall share the results with the regional entities. The regional entities shall be given the opportunity to review and comment on the conclusions in the assessment and to provide additional information as appropriate. The reliability assessments and their conclusions are the responsibility of NERC's technical review team and NERC.

The preparation and approval of NERC's reliability assessment reports shall follow a prescribed schedule including review, comment, and possible approval by appropriate NERC committees. The long-term and seasonal (summer and winter) reliability assessment reports shall be further reviewed for approval by the board for publication to the electric industry.

**806. Scope of the Reliability Performance and Analysis Program**

The components of the program will include analysis of large-scale outages, disturbances, and near misses to determine root causes and lessons learned; identification and continuous monitoring of performance indices to detect emerging trends and signs of a decline in reliability performance; and communications of performance results, trends, recommendations, and initiatives to those responsible to take actions; followed with confirmation of actions to correct any deficiencies identified. Within NERC, the reliability performance program will provide performance results to the standards development, compliance enforcement, and reliability readiness programs to make the necessary adjustments to preserve reliability based on a risk-based approach. Recommendations that result from this program are reviewed as part of the NERC readiness evaluation and improvement program.

**807. Analysis of Major Events**

Responding to major blackouts and other system disturbances or emergencies can be divided into four phases: situational assessment and communications; situation tracking and communications; data collection, investigation, analysis, and reporting; and follow-up on recommendations.

- a. NERC's role following a blackout or other major bulk power system disturbance or emergency is to provide leadership, coordination, technical expertise, and assistance to the industry in responding to the event. Working closely with the regional entities and reliability coordinators, NERC will coordinate and facilitate efforts among industry participants, and with state, federal, and provincial governments in the United States and Canada to support the industry's response.
- b. When responding to any event where physical or cyber security is suspected as a cause or contributing factor to an event, NERC will immediately notify appropriate government agencies and coordinate its activities with them.
- c. During the conduct of some NERC analyses, assistance may be needed from government agencies. This assistance could include: authority to require data reporting from affected or involved parties; communications with other agencies of government; investigations related to possible criminal or terrorist involvement in the event; resources for initial data gathering immediately after the event; authority to call meetings of affected or involved parties; and technical and analytical resources for studies.
- d. NERC shall work with other participants to establish a clear delineation of roles, responsibilities, and coordination requirements among industry and government for the investigation and reporting of findings, conclusions, and recommendations related to major blackouts, disturbances, or other emergencies affecting the bulk power system with the objective of avoiding, to the extent possible, multiple investigations of the same event. If the event is confined to a single regional entity, NERC representatives will participate as members of the regional entity analysis team.

- e. NERC and applicable entity(s) shall apply the NERC *Blackout and Disturbance Response Procedures*, which are incorporated into these rules as **Appendix 8**. These procedures provide a framework to guide NERC's response to events that may have multiregional, national, or international implications. Experienced industry leadership shall be applied to tailor the response to the specific circumstances of the event. In accordance with that procedure, the NERC president will determine whether the event warrants analysis at the NERC-level. A regional entity may request that NERC elevate any analysis to a NERC level.
- f. NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry in accordance with section 810.

**808. Analysis of Off-Normal Events, Potential System Vulnerabilities, and System Performance**

- 1. NERC shall analyze system and equipment performance events that do not rise to the level of a major blackout, disturbance, or system emergency, as described in section 807. NERC shall also analyze potential vulnerabilities in the bulk power system brought to its attention by government agencies. The purpose of these analyses is to identify the root causes of events that may be precursors of potentially more serious events or that have the potential to cause more serious events, to assess past reliability performance for lessons learned, and to develop reliability performance benchmarks and trends.
- 2. NERC will screen and analyze events and potential vulnerabilities for significance, and information from those with generic applicability will be disseminated to the industry in accordance with section 810.

**809. Reliability Benchmarking**

NERC shall identify and track key reliability indicators as a means of benchmarking reliability performance and measuring reliability improvements. This program will include assessing available metrics, developing guidelines for acceptable metrics, maintaining a performance metrics “dashboard” on the NERC Web site, and developing appropriate reliability performance benchmarks.

**810. Information Exchange and Issuance of NERC Advisories, Recommendations and Essential Actions**

- 1. Members of NERC and bulk power system owners, operators, and users shall provide NERC with detailed and timely operating experience information and data.
- 2. In the normal course of operations, NERC disseminates the results of its events analysis findings, lessons learned and other analysis and information gathering to the industry. These findings, lessons learned and other information will be

reviewed as part of the readiness evaluation and improvement program and also be used to guide the reliability assessment program.

3. When NERC determines it is necessary to place the industry or segments of the industry on formal notice of its findings, analyses, and recommendations, NERC will provide such notification in the form of specific operations or equipment Advisories, Recommendations or Essential Actions:
  - 3.1 Level 1 (Advisories) – purely informational, intended to advise certain segments of the owners, operators and users of the bulk power system of findings and lessons learned;
  - 3.2 Level 2 (Recommendations) – specific actions that NERC is recommending be considered on a particular topic by certain segments of owners, operators, and users of the bulk power system according to each entity’s facts and circumstances;
  - 3.3 Level 3 (Essential Actions) – specific actions that NERC has determined are essential for certain segments of owners, operators, or users of the bulk power system to take to ensure the reliability of the bulk power system. Such Essential Actions require NERC board approval before issuance.
4. The bulk power system owners, operators, and users to which Level 2 (Recommendations) and Level 3 (Essential Actions) notifications apply are to evaluate and take appropriate action on such issuances by NERC. Such bulk power system owners, operators, and users shall also provide reports of actions taken and timely updates on progress towards resolving the issues raised in the Recommendations and Essential Actions in accordance with the reporting date(s) specified by NERC.
5. NERC will advise the Commission and other applicable governmental authorities of its intent to issue all Level 1 Advisories, Level 2 Recommendations, and Level 3 Essential Actions at least five (5) business days prior to issuance, unless extraordinary circumstances exist that warrant issuance less than five (5) business days after such advice. NERC will file a report with the Commission and other applicable governmental authorities no later than thirty (30) days following the date by which NERC has requested the bulk power system owners, operators, and users to which a Level 2 Recommendation or Level 3 Essential Action issuance applies to provide reports of actions taken in response to the notification. NERC’s report to the Commission and other applicable governmental authorities will describe the actions taken by the relevant owners, operators, and users of the bulk power system and the success of such actions taken in correcting any vulnerability or deficiency that was the subject of the notification, with appropriate protection for confidential or critical infrastructure information.

**811. Equipment Performance Data**

Through its Generating Availability Data System (GADS), NERC shall collect operating information about the performance of electric generating equipment; provide assistance to those researching information on power plant outages stored in its database; and support equipment reliability as well as availability analyses and other decision-making processes developed by GADS subscribers. GADS data is also used in conducting assessments of generation resource adequacy.



## **SECTION 900 — TRAINING AND EDUCATION**

### **901. Scope of the Training and Education Program**

Maintaining the reliability of the bulk electric system through implementation of the Reliability Standards requires informed and trained personnel. The training and education program will provide the education and training necessary for bulk power system personnel and regulators to obtain the essential knowledge necessary to understand and operate the bulk electric system.

NERC shall develop and maintain training and education programs for the purpose of establishing training requirements, developing materials, and developing training activities. The target audience of the training and education programs shall be bulk power system operating personnel including system operations personnel, operations support personnel (engineering and information technology), supervisors and managers, training personnel, and other personnel directly responsible for complying with NERC reliability standards who, through their actions or inactions, may impact the real-time, or day-ahead reliability of the bulk power system.

NERC shall also develop and provide appropriate training and education for industry participants and regulators affected by new or changed reliability standards or compliance requirements.

To accomplish those objectives:

1. NERC shall periodically conduct job task analyses for targeted bulk power system personnel to ensure that the training program content is properly aligned to the job tasks performed by those personnel.
2. NERC shall develop and maintain personnel training program curriculum requirements based on valid job-task analysis.
3. NERC shall periodically conduct performance surveys to determine the effectiveness of the training program and identify areas for further training development and improvement.
4. NERC shall develop training and education materials and activities to assist bulk power system entities implementing new or revised reliability standard requirements or other NERC-related changes.
5. NERC shall develop and provide training to people who participate in NERC and regional entity evaluations, audits, and investigations for the compliance enforcement program, organization certification program, reliability readiness evaluation program, and the continuing education program.

### **902. Continuing Education Program**

NERC shall develop and maintain a continuing education program to foster the improvement of training and to promote quality in the training programs used by and

implemented by bulk power system entities. The program shall approve or accredit those activities and entities meeting NERC continuing education requirements.

1. NERC shall develop and implement continuing education program requirements that promote excellence in training programs and advance improved performance for bulk system personnel identified in Section 901.
2. NERC shall develop and maintain a process to approve or accredit continuing education providers and activities seeking approval or accreditation and meeting NERC-approved continuing education requirements.
3. NERC shall perform periodic audits on continuing education providers and training activities to ensure that the approved or accredited providers and training activities satisfy NERC continuing education requirements.
4. NERC shall develop and maintain an appeals process for disputed application reviews, interpretations of guidelines and standards, probation or suspension of NERC-approved provider status, or continuing education hour disputes.

## **SECTION 1000 — SITUATION AWARENESS AND INFRASTRUCTURE SECURITY**

### **1001. Situation Awareness**

NERC shall through the use of reliability coordinators and available tools, monitor present conditions on the bulk power system and provide leadership coordination, technical expertise, and assistance to the industry in responding to events as necessary. To accomplish these goals, NERC will:

1. Maintain real-time situation awareness of conditions on the bulk power system;
2. Notify the industry of significant bulk power system events that have occurred in one area, and which have the potential to impact reliability in other areas;
3. Maintain and strengthen high-level communication, coordination, and cooperation with governments and government agencies regarding real-time conditions; and
4. Enable the reliable operation of interconnected bulk power systems by facilitating information exchange and coordination among reliability service organizations.

### **1002. Reliability Support Services**

NERC will provide tools and other support services for the benefit of reliability coordinators and other system operators, including the Area Control Error (ACE) and Frequency Monitoring System, NERC Hotline, Real-time Flows, System Data Exchange (SDX), Reliability Coordinator Information System (RCIS), Transmission Services Information Network (TSIN), Interchange Distribution Calculator (IDC), Interregional Security Network (ISN), and Central Repository for Security Events (CRC). To accomplish this goal, NERC will:

1. Maintain the reliability and effectiveness of all mission-critical operating reliability support systems and services;
2. Continue to support maintenance of a transmission provider curtailment report on the CRC site in response to Federal Energy Regulatory Commission Order 605;
3. Investigate and analyze the use of high-speed real-time system measurements, including phasors, in predicting the behavior and performance of the Eastern Interconnection; and
4. Facilitate real-time voice and data exchange services among reliability coordinators (e.g., Hotline, Interregional Security Network, NERCnet, System Data Exchange, etc.).

### **1003. Infrastructure Security Program**

NERC shall coordinate electric industry activities to promote critical infrastructure protection of the bulk power system in North America by taking a leadership role in critical infrastructure protection of the electricity sector so as to reduce vulnerability and

improve mitigation and protection of the electricity sector's critical infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. Electric Sector Information Sharing and Analysis Center (ESISAC)
  - 1.1 NERC shall serve as the electricity sector's Sector Coordinator and operate its Information Sharing and Analysis Center to gather information and communicate security-related threats and incidents within the sector, with United States and Canadian government agencies, and with other critical infrastructure sectors.
  - 1.2 NERC shall improve the capability of the ESISAC to analyze security threats and incident information and provide situational assessments for the electricity sector and governments.
  - 1.3 NERC shall work closely with the United States Department of Homeland Security, Department of Energy, Natural Resources Canada, and Public Safety and Emergency Preparedness Canada.
  - 1.4 NERC shall strengthen and expand these functions and working relationships with the electricity sector, other critical infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the bulk power system.
  - 1.5 NERC shall fill the role of the Electricity Sector Coordinating Council and coordinate with the Government Coordinating Council.
  - 1.6 NERC shall coordinate with other critical infrastructure sectors through active participation with the other Sector Coordinating Councils, the other ISACs, and the National Infrastructure Advisory Committee.
  - 1.7 NERC shall encourage and participate in coordinated critical infrastructure protection exercises, including interdependencies with other critical infrastructure sectors.
2. Security Planning
  - 2.1 NERC shall take a risk management approach to critical infrastructure protection, considering probability and severity, and recognizing that mitigation and recovery can be practical alternatives to prevention.
  - 2.2 NERC shall keep abreast of the changing threat environment through collaboration with government agencies.
  - 2.3 NERC shall develop criteria to identify critical physical and cyber assets, assess security threats, identify risk assessment methodologies, and assess effectiveness of physical and cyber protection measures.

- 2.4 NERC shall enhance and maintain the bulk power system critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical bulk power system equipment.
- 2.5 NERC shall support implementation of the Cyber Security Standard through education and outreach.
- 2.6 NERC shall review and improve existing Security Guidelines, develop new Security Guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into standards.
- 2.7 NERC shall conduct education and outreach initiatives to increase awareness and respond to the needs of the electricity sector.
- 2.8 NERC shall strengthen relationships with federal, state, and provincial government agencies on critical infrastructure protection matters.
- 2.9 NERC shall maintain and improve mechanisms for the sharing of sensitive or classified information with federal, state, and provincial government agencies on critical infrastructure protection matters; work with DOE and DHS to implement the National Infrastructure Protection Plan, as applicable to the electricity sector; and coordinate this work with PSEPC.
- 2.10 NERC shall improve methods to better assess the impact of a possible physical attack on the bulk power system and means to deter, mitigate, and respond following an attack.
- 2.11 NERC shall assess the results of vulnerability assessments and enhance the security of System Control and Data Acquisition (SCADA) and process control systems by developing methods to detect an emerging cyber attack and the means to mitigate impacts on the bulk power systems.
- 2.12 NERC shall work with the National SCADA Test Bed and the Process Control Systems Forum to accelerate the development of technology that will enhance the security, safety, and reliability of process control and SCADA systems.

## **SECTION 1100 — ANNUAL NERC BUSINESS PLANS AND BUDGETS**

### **1101. Scope of Business Plans and Budgets**

The board shall determine the content of the budgets to be submitted to the applicable ERO governmental authorities with consultation from the members of the Members Representatives Committee, regional entities, and others in accordance with the bylaws. The board shall identify any activities outside the scope of NERC's statutory reliability functions, if any, and the appropriate funding mechanisms for those activities.

### **1102. NERC Funding and Cost Allocation**

1. In order that NERC's costs shall be fairly allocated among interconnections and among regional entities, the NERC funding mechanism for all statutory functions shall be based on net energy for load (NEL).
2. NERC's costs shall be allocated so that all load (or, in the case of costs for an interconnection or regional entity, all load within that interconnection or regional entity) bears an equitable share of such costs based on NEL.
3. Costs shall be equitably allocated between countries or regional entities thereof for which NERC has been designated or recognized as the electric reliability authority.
4. Costs incurred to accomplish the statutory functions for one interconnection, regional entity, or group of entities will be directly assigned to that interconnection, regional entity, or group of entities provided that such costs are allocated equitably to end-users based on net energy for load.

### **1103. NERC Budget Development**

1. The NERC annual budget process shall be initiated in March of each calendar year thereby allowing a sufficient amount of time for NERC to receive member inputs, develop the budget, and receive board and, where authorized by applicable legislation or agreement, ERO governmental authority approval of the NERC budget for the following fiscal year.
2. The NERC budget submittal to ERO governmental authorities shall include provisions for all ERO functions, all regional entity delegated functions as specified in delegation agreements and reasonable reserves and contingencies.
3. The NERC annual budget submittal to ERO governmental authorities shall include the following information: (1) budget component justification based on statutory or other authorities; (2) how the budgeted activity lends itself to the accomplishment of the statutory or other authorities; (3) methods of calculating budget estimates; (4) who prioritizes competing needs; (5) how the budget meets the objectives of affordability, sustainability, and efficiency and effectiveness of

expenditures; (6) implementation to meet international standards; (7) transparency; and (8) accountability and execution in accordance with operating plan, performance measures, and shifting priorities.

4. NERC shall develop, in consultation with the regional entities, a reasonable and consistent system of accounts, to allow a meaningful comparison of actual results at the NERC and regional entity level by the applicable ERO governmental authorities.

#### **1104. Submittal of Regional Entity Budgets to NERC**

1. Each regional entity shall submit its annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC no later than June 1 of the prior year, together with supporting materials including the regional entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees, and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures.
2. NERC shall review and approve each regional entity's budget for meeting the requirements of its delegated authority. Concurrent with approving the NERC budget, NERC shall review and approve, or reject, each regional entity budget for filing.
3. NERC shall also have the right to review from time to time, in reasonable intervals but no less frequently than every three years, the financial books and records of each regional entity having delegated authority in order to ensure that the documentation fairly represents in all material respects appropriate funding of delegated functions.

#### **1105. Submittal of NERC and Regional Entity Budgets to Governmental Authorities for Approval**

1. NERC shall file for approval by the applicable ERO governmental authorities at least 130 days in advance of the start of each fiscal year. The filing shall include: (1) the complete NERC and regional entity budgets including the business plans and organizational charts approved by the board, (2) NERC's annual funding requirement (including regional entity costs for delegated functions), (3) the previous year's audited financial statements, and (4) the mechanism for assessing charges to recover that annual funding requirement, together with supporting materials in sufficient detail to support the requested funding requirement.
2. NERC shall seek approval from each governmental authority requiring such approval for the funding requirements necessary to perform ERO activities within their jurisdictions.

**1106. NERC and Regional Entity Billing and Collections**

1. NERC shall request the regional entities to identify all load-serving entities<sup>3</sup> within each regional entity and the NEL assigned to each load-serving entity, and the regional entities shall supply the requested information. The assignment of a funding requirement to an entity shall not be the basis for determining that the entity must be registered in the compliance registry.
2. NERC shall accumulate the NEL by load-serving entities for each ERO governmental authority and submit the proportional share of NERC funding requirements to each ERO governmental authority for approval together with supporting materials in sufficient detail to support the requested funding requirement.
3. NEL reported by balancing authorities within a region shall be used to rationalize and validate amounts allocated for collection through regional entity processes.
4. The billing and collection processes shall provide:
  - 4.1 A clear validation of billing and application of payments.
  - 4.2 A minimum of data requests to those being billed.
  - 4.3 Adequate controls to ensure integrity in the billing determinants including identification of entities responsible for funding NERC's activities.
  - 4.4 Consistent billing and collection terms.
5. NERC will bill and collect all budget requirements approved by applicable ERO governmental authorities (including the funds required to support those functions assigned to the regional entities through the delegation agreements) directly from the load-serving entities or their designees or as directed by particular ERO governmental authorities, except where the regional entity is required to collect the budget requirements for NERC, in which case the regional entity will collect directly from the load-serving entities or as otherwise provided by agreement and submit funds to NERC. Alternatively, a load-serving entity may pay its allocated ERO costs through a regional entity managed collection mechanism.
6. NERC shall set a minimum threshold limit on the billing of small LSEs to minimize the administrative burden of collection.
7. NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

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<sup>3</sup> A regional entity shall allocate funding obligations using a NERC-approved alternative method, as stated in the regional delegation agreement.



8. In the case where a Regional Entity performs the collection for ERO, the Regional Entity will not be responsible for non-payment in the event that a user, owner or operator of the Bulk Power System does not pay its share of dues, fees and charges in a timely manner, provided that such a Regional Entity shall use reasonably diligent efforts to collect dues, fees, and other charges from all entities obligated to pay them. However, any revenues not paid shall be recovered from others within the same region to avoid cross-subsidization between regions.
9. Both NERC and the regional entities also may bill members or others for functions and services not within statutory requirements or otherwise authorized by the appropriate governmental authorities. Costs and revenues associated with these functions and services shall be separately identified and not commingled with billings associated with the funding of NERC or of the regional entities for delegated activities.

#### **1107. Penalty Applications**

1. Where NERC or a regional entity initiates an investigation that leads to imposition of a penalty, the entity that initiated the investigation shall receive any penalty monies imposed and collected as a result of that investigation.
2. All funds from financial penalties assessed in the United States received by the entity initiating the investigation shall be applied as a general offset to the entity's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Funds from financial penalties assessed against a Canadian entity shall be applied as specified by legislation or agreement.
3. In the event that an investigation is performed jointly by NERC and a regional entity, the regional entity shall receive the penalty monies and offset the entity's budget requirements for the subsequent fiscal year.
4. Exceptions to the policy due to statutory or regulatory restrictions will be considered on a case-by-case basis.

#### **1108. Special Assessments**

On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next funding cycle, NERC shall file with the applicable ERO governmental authorities, where authorized by applicable legislation or agreement, for authorization to collect a special assessment for statutory functions. Such filing shall include supporting materials to justify the requested funding, including any departure from the approved funding formula or method.

## **SECTION 1200 — REGIONAL DELEGATION AGREEMENTS**

### **1201. Pro Forma Regional Delegation Agreement**

NERC shall develop and maintain a pro forma regional entity delegation agreement, which shall serve as the basis for negotiation of consistent agreements for the delegation of ERO functions to regional entities.

### **1202. Regional Entity Essential Requirements**

NERC shall establish the essential requirements for an entity to become qualified and maintain good standing as a regional entity.

### **1203. Negotiation of Regional Delegation Agreements**

NERC shall, for all areas of North America that have provided NERC with the appropriate authority, negotiate regional delegation agreements for the purpose of ensuring all areas of the North American bulk power systems are within a regional entity area. In the event NERC is unable to reach agreement with regional entities for all areas, NERC shall provide alternative means and resources for implementing NERC functions within those areas. No delegation agreement shall take effect until it has been approved by the appropriate ERO governmental authority.

### **1204. Conformance to Rules and Terms of Regional Delegation Agreements**

NERC and each regional entity shall comply with all applicable ERO rules of procedure and the obligations stated in the regional delegation agreement.

### **1205. Sub-delegation**

The regional entity shall not sub-delegate any responsibilities and authorities delegated to it by its regional delegation agreement with NERC.

### **1206. Nonconformance to Rules or Terms of Regional Delegation Agreement**

If a regional entity is unable to comply or is not in compliance with an ERO rule of procedure or the terms of the regional delegation agreement, the regional entity shall immediately notify NERC in writing, describing the area of nonconformance and the reason for not being able to conform to the rule. NERC shall evaluate each case and inform the affected regional entity of the results of the evaluation. If NERC determines that a rule or term of the regional delegation agreement has been violated by an entity or cannot practically be implemented by an entity, NERC shall notify the applicable ERO governmental authorities and take any actions necessary to address the situation.

### **1207. Regional Entity Audits**

Approximately every three years and more frequently if necessary for cause, NERC shall audit each regional entity to verify that the regional entity continues to comply with NERC rules of procedure and the obligations of NERC delegation agreement.

## **SECTION 1300 — COMMITTEES**

### **1301. Establishing Standing Committees**

The board may from time to time create standing committees. In doing so, the board shall approve the charter of each committee and assign specific authority to each committee necessary to conduct business within that charter. Each standing committee shall work within its board-approved charter and shall be accountable to the board for performance of its board-assigned responsibilities. A NERC standing committee may not delegate its assigned work to a member forum, but, in its deliberations, may request the opinions of and consider the recommendations of a member forum.

### **1302. Committee Membership**

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and can provide for balanced decision-making by providing for representatives from each sector or, where sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate net energy for load. All committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate. Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.

### **1303. Procedures for Appointing Committee Members**

Committee members shall be nominated and selected in a manner that is open, inclusive, and fair. Unless otherwise stated in these rules or approved by the board, all committee member appointments shall be approved by the board, and committee officers shall be appointed by the Chairman of the Board.

### **1304. Procedures for Conduct of Committee Business**

1. Notice to the public of the dates, places, and times of meetings of all committees, and all nonconfidential material provided to committee members, shall be posted

on the Corporation's Web site at approximately the same time that notice is given to committee members. Meetings of all standing committees shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including but not limited to personnel matters, compliance enforcement matters, litigation, or commercially sensitive or critical infrastructure information of any entity.

2. NERC shall maintain a set of procedures, approved by the board, to guide the conduct of business by standing committees.

**1305. Committee Subgroups**

Standing committees may appoint subgroups using the same principles as in Section 1302.

## **SECTION 1400 — AMENDMENTS TO THE NERC RULES OF PROCEDURE**

### **1401. Proposals for Amendment or Repeal of Rules of Procedure**

In accordance with the bylaws of NERC, requests to amend or repeal the rules of procedure may be submitted by (1) any ten members of NERC, which number shall include members from at least three membership segments, (2) the Member Representatives Committee, (3) a standing committee of NERC to whose function and purpose the rule pertains, or (4) an officer of the ERO.

### **1402. Approval of Amendment or Repeal of Rules of Procedure**

Amendment to or repeal of rules of procedure shall be approved by the board after public notice and opportunity for comment in accordance with the bylaws of NERC. In approving changes to the rules of procedure, the board shall consider the inputs of the Member Representatives Committee, other ERO committees affected by the particular changes to the rules, and other stakeholders as appropriate. After board approval, the amendment or repeal shall be submitted to the ERO governmental authorities for approval, where authorized by legislation or agreement. No amendment to or repeal of the rules of procedure shall be effective until it has been approved by the applicable ERO governmental authorities.

### **1403. Alternative Procedure for Violation Risk Factors**

In the event the standards development process fails to produce violation risk factors for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors for that standard after notice and opportunity for comment. In adopting violation risk factors, the board shall consider the inputs of the Member Representatives Committee and affected stakeholders.

## SECTION 1500 — CONFIDENTIAL INFORMATION

### 1501. Definitions

1. **Confidential information** means (i) confidential business and market information; (ii) critical energy infrastructure information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) cybersecurity incident information; provided, that public information developed or acquired by an entity shall be excluded from this definition.
2. **Confidential business and market information** means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.
3. **Critical energy infrastructure information** means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.
4. **Critical infrastructure** means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.
5. **Cybersecurity incident information** means any information related to, describing, or which could be used to plan or cause a cybersecurity incident as defined in 18 C.F.R. § 39.1.

### 1502. Protection of Confidential Information

1. **Identification of Confidential Information** — An owner, operator, or user of the bulk power system and any other party (the “submitting entity”) shall mark as confidential any information that it submits to NERC or a regional entity (the “receiving entity”) that it reasonably believes contains confidential information as defined by these rules, indicating the category or categories defined in Section 1501 in which the information falls. If the information is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the submitting entity shall so indicate and provide supporting references and details.

2. **Confidentiality** — Except as provided herein, a receiving entity shall keep in confidence and not copy, disclose, or distribute any confidential information or any part thereof without the permission of the submitting entity, except as otherwise legally required.
3. **Information no longer Confidential** – If a submitting entity concludes that information for which it had sought confidential treatment no longer qualifies for that treatment, the submitting entity shall promptly so notify NERC or the relevant regional entity.

### **1503. Requests for Information**

1. **Limitation** — A receiving entity shall make information available only to one with a demonstrated need for access to the information from the receiving entity.
2. **Form of Request** — A person with such a need may request access to information by using the following procedure:
  - 2.1 The request must be in writing and clearly marked “Request for Information.”
  - 2.2 The request must identify the individual or entity that will use the information, explain the requester’s need for access to the information, explain how the requester will use the information in furtherance of that need, and state whether the information is publicly available or available from another source or through another means. If the requester seeks access to information that is subject to a prohibition on public disclosure in the Commission-approved rules of a regional transmission organization or independent system operator or a similar prohibition in applicable federal, state, or provincial laws, the requester shall describe how it qualifies to receive such information.
  - 2.3 The request must stipulate that, if the requester does not seek public disclosure, the requester will maintain as confidential any information received for which a submitting party has made a claim of confidentiality in accordance with NERC’s rules. As a condition to gaining access to such information, a requester shall execute a non-disclosure agreement in a form approved by NERC’s board of trustees.
3. **Notice and Opportunity for Comment** — Prior to any decision to disclose information marked as confidential, the receiving entity shall provide written notice to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed. Failure to provide such comments or otherwise respond is not deemed waiver of the claim of confidentiality.

4. **Determination by ERO or Regional Entity** — Based on the information provided by the requester under Rule 1503.2, any comments provided by the submitting entity, and any other relevant available information, the chief executive officer or his or her designee of the receiving entity shall determine whether to disclose such information.
5. **Appeal** — A person whose request for information is denied in whole or part may appeal that determination to the President of NERC (or the President’s designee) within 30 days of the determination. Appeals filed pursuant to this Rule must be in writing, addressed to the President of NERC (or the President’s designee), and clearly marked “Appeal of Information Request Denial.”

NERC will provide written notice of such appeal to the submitting entity and an opportunity for the submitting entity to either waive objection to disclosure or provide comments as to why the confidential information should not be disclosed; provided that any such comments must be received within 30 days of the notice and any failure to provide such comments or otherwise respond is not deemed a waiver of the claim of confidentiality.

The President of NERC (or the President’s designee) will make a determination with respect to any appeal within 30 days. In unusual circumstances, this time limit may be extended by the President of NERC (or the President’s designee), who will send written notice to the requester setting forth the reasons for the extension and the date on which a determination on the appeal is expected.

6. **Disclosure of Information** — In the event the receiving entity, after following the procedures herein, determines to disclose information designated as confidential information, it shall provide the submitting entity no fewer than 21 days’ written notice prior to releasing the information in order to enable such submitting entity to (a) seek an appropriate protective order or other remedy, (b) consult with the receiving entity with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Rule. Should a receiving entity be required to disclose confidential information, or should the submitting entity waive objection to disclosure, the receiving entity shall furnish only that portion of the confidential information which the receiving entity’s counsel advises is legally required.
7. **Posting of Determinations on Requests for Disclosure of Confidential Information** — Upon making its determination on a request for disclosure of confidential information, NERC or the regional entity, as applicable, shall (i) notify the requester that the request for disclosure is granted or denied, (ii) publicly post any determination to deny the request to disclose confidential information, including in such posting an explanation of the reasons for the denial (but without in such explanation disclosing the confidential information), and (iii) publicly post any determination that information claimed by the submitting entity to be confidential information is not confidential information (but without in such



posting disclosing any information that has been determined to be confidential information).

#### **1504. Employees, Contractors and Agents**

A receiving entity shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom confidential information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein.

#### **1505. Provision of Information to FERC and Other Governmental Authorities**

1. **Request** — A request from FERC for reliability information with respect to owners, operators, and users of the bulk power system within the United States is authorized by Section 215 of the Federal Power Act. Other applicable ERO governmental authorities may have similar authorizing legislation that grants a right of access to such information. Unless otherwise directed by FERC or its staff or the other ERO governmental authority requesting the information, upon receiving such a request, a receiving entity shall provide contemporaneous notice to the applicable submitting entity. In its response to such a request, a receiving entity shall preserve any mark of confidentiality and shall notify FERC or other appropriate governmental authorities that the submitting entity has marked the information as confidential.
2. **Continued Confidentiality** — Each receiving entity shall continue to treat as confidential all confidential information that it has submitted to NERC or to FERC or another appropriate ERO governmental authority, until such time as FERC or the other appropriate ERO governmental authority authorizes disclosure of such information.

#### **1506. Permitted Disclosures**

1. **Confirmed Violations** — Nothing in this Section 1500 shall prohibit the disclosure of a violation at the point when the matter is filed with an appropriate governmental authority as a notice of penalty, the “violator” admits to the violation, or the alleged violator and NERC or the regional entity reach a settlement regarding the violation.
2. **Compliance Information** — NERC and the regional entities are authorized to exchange confidential information related to evaluations, audits, and investigations in furtherance of the compliance and enforcement program, on condition they continue to maintain the confidentiality of such information.

#### **1507. Remedies for Improper Disclosure**

Any person engaged in NERC or regional entity activity under section 215 of the Federal Power Act or the equivalent laws of other appropriate governmental authorities who improperly discloses information determined to be confidential may lose access to confidential information on a temporary or permanent basis and may be subject to

adverse personnel action, including suspension or termination. Nothing in Section 1500 precludes an entity whose information was improperly disclosed from seeking a remedy in an appropriate court.

## **SECTION 1600 — REQUESTS FOR DATA OR INFORMATION**

### **1601. Scope of a NERC or Regional Entity Request for Data or Information**

Within the United States, NERC and regional entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission’s regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and regional entities may request comparable data or information, using such authority as may exist pursuant to these rules and as may be granted by ERO governmental authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to requirements contained in any Reliability Standard to provide data or information; the requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

### **1602. Procedure for Authorizing a NERC Request for Data or Information**

1. NERC shall provide a proposed request for data or information or a proposed modification to a previously-authorized request, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission’s Office of Electric Reliability at least twenty-one (21) days prior to initially posting the request or modification for public comment. Submission of the proposed request or modification to the Office of Electric Reliability is for the information of the Commission. NERC is not required to receive any approval from the Commission prior to posting the proposed request or modification for public comment in accordance with paragraph 1602.2 or issuing the request or modification to reporting entities following approval by the Board of Trustees.
2. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
  - 2.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information (“reporting entities”); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., “confidential,” “critical energy infrastructure information,” “aggregating”

or “identity masking”); and (vi) an estimate of the relative burden imposed on the reporting entities to accommodate the data or information request.

- 2.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an estimate of the burden imposed on the reporting entities to accommodate the modified data or information request, and (iii) any other items from paragraph 1.1 that require updating as a result of the modifications.
3. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC’s evaluation of the comments and recommendations, to the Board of Trustees.
4. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
5. NERC may make minor changes to an authorized request for data or information without board approval. However, if a reporting entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require board approval before they are implemented.
6. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the ERO governmental authority.

### **1603. Owners, Operators, and Users to Comply**

Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information. In the event a reporting entity within the United States fails to comply with an authorized request for data or information under Section 1600, NERC may request the Commission to exercise its enforcement authority to require the reporting entity to comply with the request for data or information and for other appropriate enforcement action by the Commission. NERC will make any request for the Commission to enforce a request for data or information through a non-public submission to the Commission’s enforcement staff.

### **1604. Requests by Regional Entity for Data or Information**

1. A regional entity may request that NERC seek authorization for a request for data or information to be applicable within the footprint of the regional entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600.
2. A regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural

elements as are included in this Section 1600. Any such regional entity procedures or changes to such procedures shall be submitted to NERC for approval. Upon approving such procedures or changes thereto, NERC shall file the proposed procedures or proposed changes for approval by the Commission and any other ERO governmental authorities applicable to the regional entity. The regional entity procedures or changes to such procedures shall not be effective in a jurisdiction until approved by, and in accordance with any revisions directed by, the Commission or other ERO governmental authority.

### **1605. Confidentiality**

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as critical energy infrastructure information, then the applicable provisions of Section 1500 will apply without further action by a submitting entity. A submitting entity may designate any other data or information as confidential pursuant to the provisions of Section 1500, and NERC or the regional entity shall treat that data or information in accordance with Section 1500. NERC or a regional entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

### **1606. Expedited Procedures for Requesting Time-Sensitive Data or Information**

1. In the event NERC or a regional entity must obtain data or information by a date or within a time period that does not permit adherence to the time periods specified in Section 1602, the procedures specified in Section 1606 may be used to obtain the data or information. Without limiting the circumstances in which the procedures in Section 1606 may be used, such circumstances include situations in which it is necessary to obtain the data or information (in order to evaluate a threat to the reliability or security of the bulk-power system, or to comply with a directive in an order issued by the Commission or by another ERO governmental authority) within a shorter time period than possible under Section 1602. The procedures specified in Section 1606 may only be used if authorized by the NERC Board of Trustees prior to activation of such procedures.
2. Prior to posting a proposed request for data or information, or a modification to a previously-authorized request, for public comment under Section 1606, NERC shall provide the proposed request or modification, including the information specified in paragraph 1602.2.1 or 1602.2.2 as applicable, to the Commission's Office of Electric Reliability. The submission to the Commission's Office of Electric Reliability shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information. The submission shall be made to the Commission's Office of Electric Reliability as far in advance, up to twenty-one (21) days, of the posting of the proposed request or modification for public comments as is reasonably possible under the circumstances, but in no event less than two (2) days in advance of the public posting of the proposed request or modification.

3. NERC shall post the proposed request for data or information or proposed modification to a previously-authorized request for data or information for a public comment period that is reasonable in duration given the circumstances, but in no event shorter than five (5) days. The proposed request for data or information or proposed modification to a previously-authorized request for data or information shall include the information specified in paragraph 1602.2.1 or 1602.2.2, as applicable, and shall also include an explanation of why it is necessary to use the expedited procedures of Section 1606 to obtain the data or information.
4. The provisions of paragraphs 1602.3, 1602.4, 1602.5 and 1602.6 shall be applicable to a request for data or information or modification to a previously-authorized request for data or information developed and issued pursuant to Section 1606, except that (a) if NERC makes minor changes to an authorized request for data or information without board approval, such changes shall require board approval if a reporting entity objects to NERC in writing to such changes within five (5) days of issuance of the modified request; and (b) authorization of the request for data or information shall be final unless an affected party appeals the authorization of the request by the Board of Trustees to the ERO governmental authority within five (5) days following the decision of the Board of Trustees authorizing the request, which decision shall be promptly posted on NERC's web site.

**DOCKET NOS. RR06-1-016/017 AND RR07-08-004/005**

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

**ATTACHMENT 3**

**REVISED AMENDED AND RESTATED DELEGATION AGREEMENT  
BETWEEN NERC AND  
FLORIDA RELIABILITY COORDINATING COUNCIL**

**ATTACHMENT 3A:  
CLEAN VERSION OF REVISED DELEGATION AGREEMENT**

**ATTACHMENT 3B:  
REDLINED VERSION OF REVISED FRCC BYLAWS**

**REDLINED VERSION OF REVISED EXHIBIT D  
TO DELEGATION AGREEMENT INCLUDING REVISED FRCC  
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

**ATTACHMENT 3A:**

**CLEAN VERSION OF REVISED DELEGATION AGREEMENT**





FLORIDA RELIABILITY COORDINATING COUNCIL, INC.  
1408 N. WESTSHORE BLVD. TAMPA, FL 33607-4512  
PHONE 813.289.5644 FAX 813.289.5646  
WWW.FRCC.COM

February 10, 2009

Mr. David Cook  
Vice President, General Counsel and  
Director of Regulatory Services  
NERC  
Princeton Forrestal Village  
116-390 Village Boulevard  
Princeton NJ 08540-5731

RE: FRCC Regional Delegation Agreement

Dear David:

On February 6, 2009, the FRCC Board of Directors approved the following documents. The documents were electronically provided to you in both a redline and clean format. The FRCC feels these revisions meet the directives required by FERC in its December 19, 2008 Order regarding our Delegation Agreement.

- **Exhibit B – Amended Bylaws.** The FRCC has made the necessary changes in its Bylaws to meet the FERC's directives in its December 19, 2009 Order. The Amended Bylaws were approved by the Board of Directors and the Voting Members of the FRCC on February 6, 2009.
- **Exhibit D – Compliance Monitoring and Enforcement**
- **FRCC Regional Compliance Monitoring and Enforcement Program indicating changes made against the NERC CMEP.** This includes Attachment 1 and Attachment 2 to the CMEP.

The FRCC is prepared to execute our Delegation Agreement following receipt of FERC approval of the revisions in the Delegation Agreement.

If you have any questions, please feel free to give me a call.

Sincerely,

SARAH S ROGERS  
President and CEO

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND FLORIDA RELIABILITY COORDINATING COUNCIL**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2008, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Florida Reliability Coordinating Council, an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and FRCC may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

**WHEREAS**, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

**WHEREAS**, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter “Order 672”);

**WHEREAS**, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

**WHEREAS**, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

**WHEREAS**, the Act and Section 39.8 of the Commission’s regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as FRCC provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

**WHEREAS**, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

**WHEREAS**, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

**WHEREAS**, FRCC is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

**WHEREAS**, NERC will work through FRCC to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

**WHEREAS**, NERC has concluded that FRCC meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, NERC and FRCC agree as follows:

**1. Definitions.** The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to FRCC to propose and enforce Reliability Standards pursuant to the Act.

(d) FRCC's Rules means the bylaws, a rule of procedure or other organizational rule or protocol of FRCC.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

**2. Representations.**

(a) For purposes of its Delegated Authority, FRCC hereby represents and warrants to NERC that:

(i) FRCC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. FRCC is governed in accordance with its bylaws by a balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any FRCC decision and no single industry sector can veto any FRCC decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**<sup>1</sup>, and as so attached are in full force and effect. No other such corporate governance documents are binding upon FRCC.

(ii) As set forth in **Exhibit C** hereto<sup>2</sup>, FRCC has developed a standards development procedure, which provides the process that FRCC may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto<sup>3</sup>, FRCC has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to FRCC that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

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<sup>1</sup> The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

<sup>2</sup> The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

<sup>3</sup> The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.

### 3. Covenants.

(a) During the term of this Agreement, FRCC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the FRCC Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of FRCC under this Agreement without first obtaining the consent of FRCC which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and FRCC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

### 4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of [REGIONAL ENTITY] in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to FRCC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) Not Applicable.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, FRCC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

**5. Reliability Standards.**

In connection with its Delegated Authority, FRCC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords FRCC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through FRCC's process as set forth in **Exhibit C**. Proposals approved through FRCC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. FRCC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

**6. Enforcement.**

(a) In connection with its delegated authority pursuant to this Agreement, FRCC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and FRCC agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. FRCC may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, FRCC agrees to comply with the NERC Rules in implementing this program.

(b) FRCC shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was

or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and FRCC shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by FRCC shall be filed with NERC, in accordance with the NERC Rules.

(e) FRCC shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) FRCC shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, FRCC shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review FRCC's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) FRCC shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights



and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

**7. Delegation-Related Services.** NERC will engage FRCC on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

**8. Funding.** FRCC and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund FRCC activities necessary for FRCC to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon FRCC without providing appropriate funding to carry out such mandates;

(b) FRCC and NERC agree that costs of carrying out FRCC's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is proposed by FRCC and approved by NERC and the Commission. If FRCC proposes to use a formula other than net energy for load beginning in the following year, FRCC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and FRCC to the Commission pursuant to 18 C.F.R. §39.4 for such year;

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide FRCC with the form for budget submittal no later than April 30 of the prior year.

(e) FRCC shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other FRCC activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The FRCC budget submission shall include supporting materials, including FRCC's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. FRCC shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(f) FRCC's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve FRCC's budget for meeting its responsibilities under the Delegation Agreement.

(h) FRCC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) FRCC shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of FRCC in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which FRCC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which FRCC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of FRCC.

**9. Assignment.** This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. FRCC may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit FRCC from contracting with other entities to assist it in carrying out its Delegated Authority, provided FRCC retains control and responsibility for such Delegated Authority.

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided

in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years, from the original effective date of May 2, 2007, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that FRCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If FRCC meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of FRCC's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time FRCC may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be

effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

**12. Limitation of Liability.** FRCC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and FRCC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the FRCC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the FRCC or NERC is found liable for gross negligence or intentional misconduct, in which case FRCC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

**13. No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt

notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

**15. Amendment.** Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

**16. Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of FRCC under this Agreement without first obtaining the consent of FRCC, which consent shall not be unreasonably withheld or delayed. To the extent FRCC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of FRCC under this Agreement, FRCC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by FRCC to NERC and the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

**17. Dispute Resolution.** In the event a dispute arises under this Agreement between NERC and FRCC representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

**18. Notice.** Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric  
Reliability Corporation  
116-390 Village Blvd.  
Princeton, NJ 08540-5721  
Attn: David Nevius  
Facsimile: (609) 452-9550

If to FRCC:

Florida Reliability Coordinating Council  
1408 N. Westshore Blvd.  
Suite 1002  
Tampa, FL 33607-4512  
Attn: Sarah Rogers  
Facsimile: (813) 289-5644

**19. Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

20. **Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. **Savings Clause.** Nothing in this Agreement shall be construed to preempt or limit any authority that FRCC may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. **Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. **Execution of Counterparts.** This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

**NOW THEREFORE**, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.



NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

FLORIDA RELIABILITY  
COORDINATING COUNCIL

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Sarah S. Rogers

Title: \_\_\_\_\_

Title: President & CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

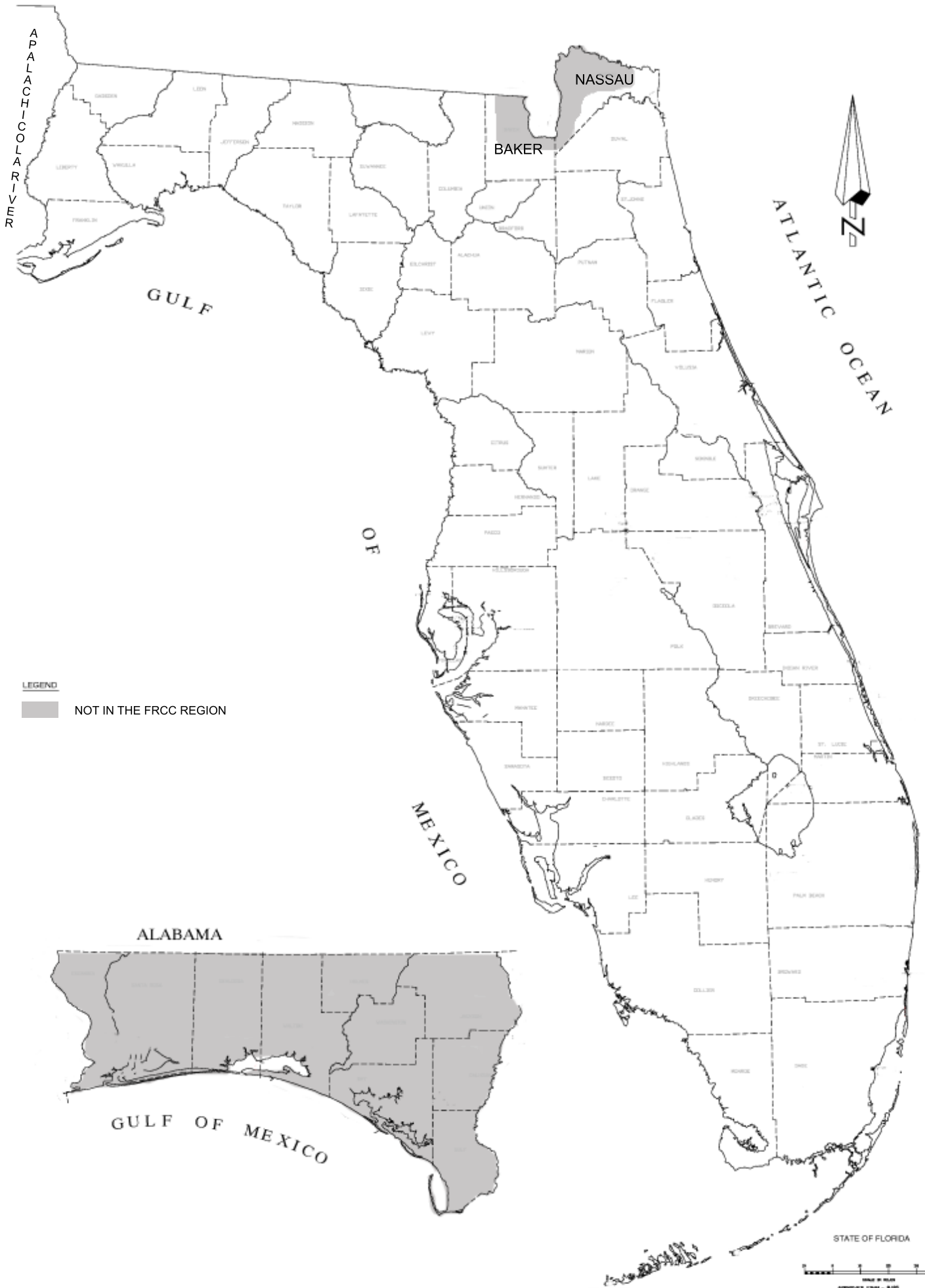
## **Exhibit A —FRCC Boundaries**

(see attached map)

The FRCC physical boundaries are entirely within the State of Florida. The area of the State of Florida that is within the FRCC Region is peninsular Florida east of the Apalachicola River with the exception of a small section of Baker and Nassau counties in northeast Florida. Areas west of the Apalachicola River in Florida are within the SERC Region. The entire FRCC Region is within the Eastern Interconnection. The entire FRCC Region is under the direction of the FRCC Reliability Coordinator.

The FRCC Region interconnects with the SERC Region via 10 transmission lines. The 10 lines consist of two 500 kV, four 230 kV and four 115 kV lines. These lines are referred to as the “Florida / Southern Interface”.

The areas of Baker and Nassau counties that are not part of the FRCC Region are part of the SERC Region. These sections are part of the Okefenokee Rural Electric Membership Corporation (OREMC) that is headquartered in Nahunta, GA. Roughly two thirds of OREMC load is in Georgia and one third is in Florida. The majority of the OREMC load in Florida is connected directly to the Southern Company Balancing Area in the SERC Region. A small portion of the OREMC load, about five MW, is supplied as a radial feed from FPL West Nassau Substation. OREMC has secured firm transmission service from JEA on the Florida / Southern Interface to supply this load. The OREMC schedules energy on an hourly basis to cover this load. SERC will be responsible for registration and compliance monitoring of OREMC.



## Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

**CRITERION 1:** The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

**CRITERION 2:** The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

**CRITERION 3:** If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

**CRITERION 4:** The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

**CRITERION 5:** The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

**EXHIBIT B  
TO PRO FORMA DELEGATION AGREEMENT**

**BYLAWS  
Florida Reliability Coordinating Council, Inc.**

*Amended February 6, 2009*



1408 N. Westshore Blvd., Suite 1002, Tampa, Florida 33607-4512  
Phone 813.289-5644 \* Fax 813.289-5646  
[www.frcc.com](http://www.frcc.com)

Amended and Restated FRCC Regional Delegation Agreement  
Revised for Feb 17, 2009 Compliance Filing

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**BYLAWS OF  
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**

**ARTICLE I**

**Membership**

**Section 1.1 Eligibility.**

(a) Membership in the Florida Reliability Coordinating Council, Inc. (“FRCC”) is open to any entity, without cost, that: (i) has a material interest in the reliability of the bulk power system in the FRCC region; (ii) satisfies the criteria for membership specified in this Section 1.1; (iii) qualifies for eligibility in one or more of the Sectors identified in Section 1.2; (iv) submits a written request for membership; and (v) agrees to comply with and be bound by these FRCC Bylaws (“Bylaws”) and other rules and regulations adopted by the FRCC Board of Directors, by execution of the appropriate form of Member Agreement set forth in Appendix A to these Bylaws (“Member Agreement”). Any person or entity that meets the foregoing requirements shall become a “Member” of FRCC.

(b) FRCC shall engage in two categories of activities:

(i) FRCC shall engage in the “Regional Entity Activities” specified in Section 1 of Exhibit E of the Delegation Agreement between FRCC and the North American Electric Reliability Corporation (“NERC”) dated May 2, 2007, as amended from time to time with the agreement of NERC and the approval of the Federal Energy Regulatory Commission (“Delegation Agreement”). Under the Delegation Agreement, FRCC is the Regional Entity, as defined in Sec. 215 of the Federal Power Act, with delegated authority to propose and enforce Reliability Standards for the bulk power system in the FRCC Region. The FRCC Region is defined as the geographic area of Florida east of the Apalachicola River.

(ii) FRCC shall engage in certain “Member Services Activities,” under which it provides, coordinates or administers a variety of services relating to the planning and operation of the bulk power system in the FRCC Region for or on behalf of entities meeting the criteria in Section 1.1(c)(ii) and participating in the funding of such services as specified in these Bylaws. The “Member Services” are specified in the business plan and budget approved by the Board of Directors in accordance with these Bylaws for submission to NERC under the Delegation Agreement, and as approved by NERC and the Federal Energy Regulatory Commission (“Business Plan and Budget”). Member Services are funded as specified in Section 6.2 of these Bylaws.



(c) FRCC shall have two types of Members:

(i) All Members of FRCC shall be “Regional Entity Members.” Regional Entity Members shall be eligible to participate in the Regional Entity Activities of FRCC. Such participation shall be in accordance with these Bylaws, the Member Agreement, and the Delegation Agreement, as from time to time adopted or amended and approved, and such other requirements as govern FRCC as a Regional Entity.

(ii) All Members that participate in the generation, marketing, transmission or purchase for resale of electric energy, ancillary services or capacity on, from or to the bulk power system in the FRCC Region may choose to be “Services Members,” and may participate in FRCC Member Services Activities as specified in these Bylaws. Subject to the requirements of Section 1.2, only Members that are Services Members shall be eligible to participate in decisions governing the Member Services of FRCC, or the voting rights and funding obligations of Services Members.

**Section 1.2 Voting Member.** A Voting Member is a Member that is not an Affiliate Member or an Adjunct Member. All Voting Members shall be eligible to vote on questions governing Regional Entity Activities. Only Voting Members that are Services Members shall be eligible to vote on questions governing Member Services or Member Services Activities. For purposes of the following Sector classifications, “Load Serving Entity,” whether standing alone or as part of another specified term, shall mean an entity that provides electric service to persons or entities other than the Load Serving Entity itself that purchase such service for their own use and not for resale. Voting Members shall be classified into one of the following Sectors, based on the primary nature of its activities in the FRCC Region relevant to Regional Entity Activities:

(a) **Suppliers Sector** - any entity engaged in wholesale power marketing transactions in the FRCC Region; or a generating entity that is included in the NERC Compliance Registry as a generation owner or generation operator for a facility in the FRCC Region, or that owns or is developing generation greater than 20 MW located within the FRCC Region and meets any of the following: (1) an entity with FERC-approved market-based rate authority, or (2) an exempt wholesale generator, or (3) a facility selling any output pursuant to a power purchase agreement (including fuel conversion arrangements), or (4) a FERC approved Qualifying Facility.

(b) **Non-Investor Owned Utility Wholesale Sector** - generation and transmission cooperatives and municipal joint action agencies that sell electricity to non-investor owned Load Serving Entities with native load in the FRCC Region.

(c) **Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates less than 25% of its energy requirements for retail sales or has an annual Full Requirements Energy for Load (FREL) of 1800 GWH or less in the FRCC Region.

(d) **Generating Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates at least 25% of its energy requirements for retail sales, and that has an annual Full Requirements Energy for Load (FREL) greater than 1800 GWH in the FRCC Region.

(e) **Investor Owned Utility Sector** - investor owned utilities generating and serving retail native load greater than 15,000 GWH in the FRCC Region.

(f) **General Sector** - persons or entities that take delivery of energy within the FRCC Region that is not purchased for resale; agents or associations representing groups of such entities that are commercial or industrial entities; agents or advocate groups representing small customers; and other persons or entities owning assets or engaging in commercial activities in the FRCC Region.

**Section 1.3 Affiliate Member.** An Affiliate Member is defined as an entity that (i) otherwise qualifies as a Voting Member pursuant to Section 1.1 and 1.2 and (ii) is an Affiliate of a Voting Member. For purposes of these Bylaws, being an “Affiliate” shall mean that (1) a Voting Member controls, is controlled by or is under common control with, such Affiliate Member, and (2) for any exempt wholesale generator, as defined the Public Utility Holding Company Act of 2005, as amended, the meaning provided in Section 214 of the Federal Power Act. Affiliate Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Affiliate Members shall be bound by the same obligations as Voting Members and Adjunct Members of FRCC. Questions as to whether an entity is an Affiliate of a Voting Member shall be resolved by the Board.

**Section 1.4 Adjunct Member.** A person or entity may be approved as an Adjunct Member by the Board if such entity has a material interest in the reliability of the bulk power system in the FRCC region but does not meet the definitions and requirements to join as a Voting Member or Affiliate Member. Adjunct Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Adjunct Members shall be bound by the same obligations as Voting Members and Affiliate Members of FRCC.

**Section 1.5 New Members.** The Board shall review and act upon membership applications. Prior to membership, the Board shall certify that an applicant complies with the eligibility requirements.

**Section 1.6 Membership Commitment.** Each Member of the FRCC shall be required to execute, in counterpart, a Member Agreement, as applicable, in the form shown in Appendix A to these Bylaws.

### **Section 1.7 Obligations.**

(a) Each Member of the FRCC shall promote, support and comply with the purposes and policies of the FRCC as set forth in its Certificate of Incorporation and Bylaws, and the other documents governing the activities of FRCC identified in the Bylaws.

(b) Each Member of the FRCC shall appoint a representative as provided herein to receive notices from the FRCC and shall give to the FRCC Chief Executive Officer (“CEO”) in writing (signed by a duly authorized representative of the Member) the name, business address and electronic address of the person thus appointed. An appointed representative of a Member who is unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Member.

## **Section 1.8 Participation.**

(a) For purposes of these Bylaws, an entity and all of its Affiliates shall be considered one "Entity." No Entity shall simultaneously hold more than one Voting Member status or have more than one voting representative on a Standing Committee, or more than one seat on the Board.

(b) An Entity may join FRCC in any Sector in which it qualifies for Membership, provided that an Entity may join as a Voting Member in only one Sector. In the event that an Entity qualifies for more than one Sector, such Entity may join such other Sectors as an Affiliate Member upon payment of any applicable Affiliate Member Annual Fees in accordance with Article VI Section 6.2(b)(ii) for each Sector in which such Entity desires to participate as an Affiliate Member. Once an Entity has elected to be a Voting Member of one Sector, the Entity must continue to vote in that Sector for a minimum of one (1) year. If, at any point, it is determined that an Entity no longer meets the qualifications for the Sector it selected, the Entity may not vote in that Sector; however, that Entity may then immediately elect to become a Voting Member in any Sector for which it does qualify. Questions as to whether an Entity meets the qualifications of a Sector shall be resolved by the Board.

(c) Subject to the requirements of these Bylaws and the Articles of Incorporation, each Voting Member in good standing is entitled to vote on each matter submitted to a vote of the Voting Members. A Member in good standing is one that (i) meets all qualifications for membership as provided in these Bylaws, (ii) is not in arrears for payment of any applicable annual fees for membership or payment of any other fees owed to FRCC unless such payment is being disputed in good faith, and (iii) has not been found by a court to be in breach of any contract with FRCC. Voting Members that are not in good standing are not entitled to vote on any matter until they have regained good standing.

## **ARTICLE II**

### **Meetings of Voting Members**

**Section 2.1 Annual Meeting of Voting Members.** Voting Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). The Voting Members from each Sector shall elect, by majority vote, each Voting Member having one (1) vote, Directors to the Board who will represent their Sector. The Voting Members shall conduct such other business as may be properly brought before them. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. The Annual Meeting shall be open to Affiliate Members and Adjunct Members, and such other invitees as the Board may deem appropriate, provided that the Services Members, along with Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), may meet separately to consider matters relating to Member Services.

**Section 2.2 Special Meetings.** Special meetings of the Voting Members, for any purpose or purposes, unless otherwise prescribed by the laws of the State of Florida, or by the

Articles of Incorporation, may be called by the Chair of the Board. Special meetings of the Regional Entity Members shall be called upon request of six (6) or more Voting Members representing three (3) or more Sectors. Special meetings of the Services Members shall be called upon request of six (6) or more Voting Members that are Services Members representing three (3) or more Sectors. Notice of a special meeting stating the place, date, hour and agenda for the special meeting shall be given to the Voting Members not less than three (3) business days before the meeting. Such request for a special meeting shall state the purpose or purposes of the proposed special meeting, which shall be included as part of an agenda to be distributed to the Voting Members not less than three (3) business days before the meeting. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other.

**Section 2.3 Place of Meeting.** All meetings shall be held at or near the principal office of the FRCC in Tampa, Florida, or at such other place within or outside the State of Florida as shall be determined from time to time by the Board.

**Section 2.4 Notice of Meetings.**

(a) Notice of the Annual Meeting or any regular or special meeting of the Voting Members shall be sent by mail or electronic means to each Member's representative at the business or electronic address specified in accordance with Section 1.7(b) at least ten (10) business days before the date of the meeting. The notice shall set forth a proposed agenda for the meeting, but any matter may be considered and acted upon at any meeting, whether or not the matter was listed in the proposed agenda, if addition of the item to the agenda is approved at the meeting by the vote of the eligible Voting Members whose votes equal sixty percent (60%) or more of the total weighted sector vote of the eligible Voting Members; provided, however, that at least three (3) Sectors are represented in the affirmative. Meetings may be held at any time without notice if all of the eligible Voting Members are present, or if those not present waive notice in writing either before or after the meeting.

(b) The record date for determining Members entitled to notice shall be one month prior to the meeting date.

**Section 2.5 Quorum.** Representation at any meeting of the Regional Entity Members of more than 50% of the Voting Members, or representation at any meeting of the Services Members of more than 50% of the Voting Members that are Services Members, shall constitute a quorum for the transaction of business at such meeting; provided, however, that in each case at least four (4) eligible Sectors are represented.

**Section 2.6 Voting.** Voting by Voting Members shall be by the six (6) Sectors as defined in Section 1.2, except as otherwise provided herein. Each Voting Member within a Sector has one non-divisible vote. Each Sector shall have a “Sector Vote” in proportion to the voting rights specified in Section 3.2(e), which is to be split into an affirmative and a negative component, in the proportion that each component bears to the total votes of the Voting Members within that Sector. Action by the Voting Members shall require affirmative Sector Votes greater than 6.50.

**Section 2.7 Action without Meeting.** Any action that may be taken at a meeting of the Regional Entity Members or the Services Members may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed by all Voting Members eligible to vote in such meeting before the action is taken.

**Section 2.8 Remote Attendance.** Any Member otherwise eligible may participate in any meeting by telephone, videoconference communications equipment, or other means enabling all persons participating in the meeting to communicate with each other. A Member participating in a meeting by such means shall be deemed present in person at such meeting.

**Section 2.9 Termination of Members.**

(a) A Member may be terminated for non-payment of fees or monies due FRCC as provided in Section 6.3, or for a significant violation of obligations as set forth in Section 1.7. The Board may, by resolution, establish a fair and reasonable procedure to terminate a Member.

(b) A Member whose membership has been terminated shall be liable to FRCC for fees and any other monies due FRCC as a result of obligations incurred or commitments made prior to termination.

**Section 2.10 Withdrawal.** Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of FRCC at any time upon written notice to the CEO, whereupon it shall cease to be a Member and shall cease to be entitled or obligated to participate in the activities of the Board, Standing Committees, or any subcommittees, and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of fees and expenses for a fiscal year, the Member shall be obligated to pay its fees and other monies due to FRCC for the full fiscal year within which such termination is effective.

**Section 2.11 Reinstatement.** A former Member shall be required to apply for Membership as set forth in Section 1.1. The Board may reinstate Membership on any reasonable terms that the Board deems appropriate.

**Section 2.12 Property Ownership and Control.** Subject to applicable laws, rules, regulations, agreements, and FRCC protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction, maintenance and operation of its own facilities, present and future. A Member has no interest in the property of FRCC and waives the right to require a partition of any FRCC property.

## **ARTICLE III**

### **Board of Directors**

**Section 3.1 Powers.** The affairs of FRCC shall be managed by the Board of Directors ("Board"). The Board may exercise all such powers of the FRCC and do all such lawful acts and things as are not prohibited by the laws of the State of Florida, by the Federal Power Act, by the Articles of Incorporation or by these Bylaws.

#### **Section 3.2 Number, Election, Tenure and Governance.**

(a) Number. The Board shall include (16) Directors allocated among the Sectors as follows, and such other Directors as provided in by Section 3.2(b)(4):

- (1) Suppliers Sector- three (3) Directors
- (2) Non-Investor Owned Utility Wholesale Sector - two (2) Directors
- (3) Load Serving Entity Sector-
  - Municipal - one (1) Director
  - Cooperative - one (1) Director
- (4) Generating Load Serving Entity Sector - three (3) Directors

- (5) Investor Owned Utility Sector - Three (3) Directors
- (6) General Sector - Two (2) Directors
- (7) The CEO of FRCC - an ex-officio non-voting Director.

(b) Election.

(1) Directors, with the exception of the CEO, shall be elected as described herein.

(2) Within each Sector, only Voting Members from a given Sector may elect Directors for that Sector.

(3) Within the Load Serving Entity Sector, Director(s) representing 0.5 votes shall all be from a municipal and Director(s) representing 0.5 votes shall be from a cooperative.

(4) Within each Sector, Voting Members from a given Sector may, by majority vote, elect additional Directors subject to a maximum of five (5) Directors representing such Sector. The total votes of the Directors for such Sector shall not exceed the total votes of the Directors of such Sector specified in Section 3.2(a).

(c) Alternate Director. Any Director unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Director.

(d) Term. The term for all Directors shall be two (2) years. Any Director may be reelected for consecutive terms, without limitation. Directors within a Sector shall have staggered terms as determined by the Sector.

(e) Voting Rights.

(1) Except as provided for in subsections (2) and (3) below, each Sector shall have the number of votes as specified below:

- Suppliers Sector 2.5 Votes
- Non-Investor Owned Utility Wholesale Sector 2.0 Votes
- Load Serving Entity Sector
  - Municipal 0.5 Votes
  - Cooperative 0.5 Votes
- Generating Load Serving Entity Sector 3.0 Votes
- Investor Owned Utility Sector 3.5 Votes
- General Sector 1.0 Vote

Total 13.0 Votes

(2) Each Director, as defined in Section 3.2(a) and 3.2 (b), shall have an equal proportional vote of that Sector's total voting strength. This provision shall

apply separately to the municipal and cooperative Directors of the Load Serving Entity Sector.

- (3) If the majority of the Voting Members of a Sector are Services Members, Directors elected by that sector shall be deemed “Services Member Directors.” Only Services Member Directors shall be eligible to vote on questions governing Member Services or Member Services Activities. Deliberations on such matters may be limited to Services Member Directors, Voting Members that are Services Members, and Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), upon the vote of the Services Member Directors.
- (4) The CEO of FRCC shall not have a vote.

(f) **Limitations.** Each person or alternate serving on the Board shall be a representative of a Voting Member. Unless otherwise provided in these Bylaws, if a representative of a Voting Member is elected to serve on the Board, such person shall only be eligible to serve in such capacity so long as such person remains the representative of said Voting Member. A Voting Member shall not have more than one (1) officer, employee or agent serving as a Director.

**Section 3.3 Meetings.** Regular meetings of the Board shall be held at such times and places, within or outside the State of Florida, as may be determined by the Board. Special meetings of the Board may be called by the Chair. Special meetings shall be called upon request of six (6) or more Directors. Regular or Special Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. Except as specified in Section 3.2(e)(3), the meetings of the Board shall be open to all Members, and such other invitees as the Board may deem appropriate. The Board may meet in closed session to discuss matters of a confidential nature, including but not limited to personnel matters, litigation, or commercially sensitive information of any person or entity.

**Section 3.4 Notice of Meetings.** Notice of any regular or special meeting of the Board shall be sent by mail or electronic means to each Director, and to each Member, at such Director's and Member's usual place of business at least (ten) 10 business days, in the case of a regular meeting, or (five) 5 business days, in the case of a special meeting, before the date of the meeting. Such notice shall also be sent to the observers of the Board specified in Section 8.1. The notice shall set forth a proposed agenda for the meeting. Subject to the requirements of Section 3.2(e)(3), no agenda item may be added to the agenda at any meeting of the Board which requires action by the Board unless all Directors are present and all agree to allow such an item to be put to a vote. Meetings may be held at any time without notice if all of the Directors of the Board are present, or if those not present waive notice in writing either before or after the meeting.

**Section 3.5 Quorum.** The presence at a meeting of the Directors whose votes equal sixty percent (60%) or more of the total voting strength of the Board, or in the case of matters governed by Section 3.2(e)(3), votes equal to sixty percent (60%) or more of the total voting



strength of the Directors eligible to vote, shall constitute a quorum for any action of the Board, provided, however, that in each case at least one Director from at least four (4) Sectors are present. If at any meeting a quorum shall fail to attend, a majority of those Directors present at the meeting may adjourn that meeting without further notice until a quorum shall attend. Once a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**Section 3.6 Voting.** Action by the Board shall require approval of sixty percent (60%) or more of the total eligible voting strength of the Board.

**Section 3.7 Remote Attendance.** Directors shall be deemed present and voting at a meeting of the Board if participating in the meeting by means of a conference telephone, video conferencing, or other means enabling all persons participating in the meeting to communicate with each other.

**Section 3.8 Action without Meeting.** Any action that may be taken at a meeting of the Board may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed before the action by all Directors eligible to participate in such action.

**Section 3.9 Vacancies and Removal.** A Director may be removed with cause at any time by an affirmative vote of 60% of the Voting Members of the Sector that elected that Director. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the remaining total voting strength of the Board. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner. A vacancy may be filled only by the Voting Members of the Sector in which the vacancy occurs. Any Director so chosen shall hold office until his or her successor is duly elected and qualified or until his or her earlier resignation, ineligibility or removal.

**Section 3.10 Officers.** At the Board of Directors meeting following the Annual Meeting of the Voting Members, the Board shall elect a Chair, Vice Chair, and Secretary-Treasurer, who shall be the officers of the FRCC. No two officers of FRCC shall be officers, employees or agents of Voting Members of the same Sector or its Affiliates. The CEO of FRCC may not be elected to act as Chair, Vice-Chair or Secretary/Treasurer.

(a) Term of Office. Each officer of the Board of Directors shall hold office for two (2) fiscal years, and until his or her successor is duly elected and qualified.

(b) Removal of Officers. Any officer of the Board of Directors may be removed with or without cause at any time by the affirmative vote of seventy percent (70%) of the total voting strength of the Board.

(c) Compensation. There shall be no compensation paid to any officer of the Board of Directors of FRCC, provided that an officer serving on the staff of FRCC may be compensated for their services on the staff of FRCC.

### **Section 3.11 Responsibilities of Board of Director Officers**

(a) Chair. The Chair shall serve as the Chair of the Board. The Chair shall preside at all meetings of the Members and Board, provided that, if the Chair is not eligible to vote in a meeting governed by Section 3.2(e)(3), the Directors that are eligible shall select one of the number to preside at such meeting. The Chair shall be responsible for the preparation of the agenda for all meetings of the Members and Board. The Chair shall be a member of and preside over a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(b) Vice Chair. The Vice Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair, subject to the provisions of Section 3.11(a), and shall perform such other duties and have such other powers as the Board may from time to time prescribe. The Vice Chair shall be a member of a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(c) Secretary-Treasurer. The Secretary-Treasurer shall be responsible to assure that the FRCC staff has adequate procedures to distribute the agenda of the meetings of the Voting Members and the Board, keep the minutes of the proceedings of said meetings, and maintain the financial books and records of the FRCC, including disbursement of the funds of the FRCC in accordance with the authorized annual budget. The Secretary-Treasurer shall be a member of the Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

**Section 3.12 Vacancy.** Any vacancy in a Board of Director Officer occurring for any reason shall be filled as specified in Section 3.9.

## **ARTICLE IV**

### **Chief Executive Officer**

**Section 4.1 CEO.** The Board shall hire the CEO who, under the Board's direction, shall carry on the general affairs of the FRCC. The CEO shall be a member of the staff of FRCC and shall be a non-voting Director. It shall be the CEO's duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of FRCC. The CEO shall serve as President of FRCC. The CEO shall comply with all directives of the Board. All agents and employees shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

## **ARTICLE V**

### **Standing Committees**

**Section 5.1 Standing Committees.** There shall be a Planning Committee, an Operating Committee, a Compliance Committee, and such other committees, subcommittees,

and task forces as the Board may appoint, when deemed necessary to carry out the purposes of the FRCC.

**Section 5.2 Planning Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Planning Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Planning Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Planning Committee shall report directly to the Board and is charged with the responsibility of promoting the reliability of the bulk power system in the FRCC Region, and assessing and encouraging generation and transmission adequacy. The Planning Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.3 Operating Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Operating Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Operating Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Operating Committee shall report directly to the Board and is charged with responsibility for the coordination, operations planning, operation and maintenance of the bulk power system in the FRCC Region. The Operating Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.4 Compliance Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Compliance Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Compliance Committee shall report directly to the Board and is charged with responsibility for the development and implementation of programs to ensure compliance for both FRCC Regional Reliability Standards and NERC Reliability Standards. The Compliance Committee is not to be confused with the Board Compliance Committee which is primarily a “hearing body” and has a different voting structure as outlined in Exhibit D of the Delegation Agreement between the North American Electric Reliability Corporation and FRCC.

**Section 5.5 Rules of Procedure.** Each Standing Committee shall set its rules of procedure, provided that quorum, voting rights and voting shall be as specified in Sections 5.7 and 5.8. Such Rules of Procedure shall be as approved by the Board. All action by any Standing Committee shall be reported as prescribed herein and shall be subject to revision, alteration and approval by the Board.

**Section 5.6 Quorum.** Representation at any meeting of a Standing Committee of sixty percent (60%) or more of the total voting strength of the Standing Committee shall constitute a quorum for the transaction of business at such meeting; provided, however, that action on matters dealing with the scope or funding of Member Services shall require sixty percent (60%) or more of the total voting strength of members of the Standing Committee

representing Voting Members that are Services Members; and provided further that a quorum shall require that at least three (3) Sectors are represented, all three of which shall be Sectors a majority of the members of which are Services Members in the case of a quorum for action on matters governing Member Services.

**Section 5.7 Voting. Voting is by Sector.** Each voting representative present at a meeting is assigned a vote equal to the voting strength of his or her Sector, as provided in this section, divided by the number of voting representatives present in that Sector, except that no voting representative present at a meeting shall have more than one (1) vote, except an Investor Owned Utility Sector voting representative who may have up to 1.167 votes. Action by a Standing Committee shall require an affirmative vote equal to or greater than sixty percent (60%) of the total eligible voting strength of the Standing Committee.

Sector Votes

(1) Suppliers Sector	2.5 Votes
(2) Non-Investor Owned Utility Wholesale Sector	2.0 Votes
(3) Load Serving Entity Sector	
Municipal	0.5 Vote
Cooperative	0.5 Vote
(4) Generating Load Serving Entity Sector	3.0 Votes
(5) Investor Owned Utility Sector	3.5 Votes
(6) General Sector	1.0 Vote
Total	13.0 Votes

Only representatives of Voting Members that are Services Members shall be eligible to vote on questions governing Member Services.

**Section 5.8 Meetings.** Regular meetings of the Standing Committees shall be held at such times and places, within or outside the State of Florida, as may be determined by the Standing Committees. Special meetings of the Standing Committees may be called by the Chair or upon the request of representatives from three (3) different Sectors. Regular or Special Meetings may be held by telephone conferencing, video conferencing, or by other means enabling all participants in the meeting to communicate with each other. The meetings of the Standing Committees shall be open to all Members, and such other invitees as the Board may deem appropriate.

**ARTICLE VI**

**General Provisions**

**Section 6.1 Budget.** The Board shall annually adopt a budget for the FRCC for administrative expenses of the FRCC, including salaries, and for the costs associated with the various committees, subcommittees, professional services, projects and studies. The Board shall approve the scope and funding of Member Services, in accordance with the provisions of these

Bylaws. The funding for Member Services special projects approved by the Board may be based on a special funding, with an equitable allocation of the costs for the special project as approved by the Board. The budget may be amended from time to time during the fiscal year as determined by the Board, subject to the filing and approval requirements applicable to FRCC as a Regional Entity under the Delegation Agreement.

## **Section 6.2 Funding.**

(a) The funding of FRCC's Regional Entity Activities shall be in accordance with the provisions of Exhibit E and the section numbered eight (8) of the Delegation Agreement.

(b) The Member Services of FRCC shall be funded through an allocation of their costs to all Members that are Services Members in accordance with the provisions of subsections 6.2(b)(i) - (iii) below. The funding of all Member Services shall be kept separate from the funding of Regional Entity Activities as specified in the Business Plan and Budget.

(i) **Services Members.** The allocation for Voting Members that are Services Members shall be based on the following calculation; provided, however, that in no event shall the allocation be less than \$20,000 per annum.

$$\text{Services Member Allocation} = 0.25 (1/N) + 0.25 (B/C) + 0.25 (D/E) + 0.25 (F/G)$$

- N Total number of voting Services Members
- B Voting Services Member's previous-year Full Requirements Energy for Load (FREL) within the FRCC
- C Total of factor B for all voting Services Members
- D Voting Services Member's Net Summer Generating Capacity within the FRCC Region as of December 31 of the previous year, as defined in the FRCC Load and Resource Plan
- E Total of factor D for all voting Services Members
- F Sum of Circuit Miles of Transmission Facilities (69kV and above) of voting Services Members within the FRCC Region times the respective operating voltage as of December 31 of the previous year
- G Total of factor F for all voting Services Members

**Full Requirements Energy for Load (FREL)** The net electrical energy requirements of the Services Member's electric system, and the net electric energy requirements of all full requirements customers of the Services Member, except if a full requirements customer of a Services Member joins FRCC. In such case, the electrical energy requirements of such full requirements customer will only be counted for the funding calculation for that Services Member who is the full requirements customer, and not for the Services Member who is the supplier of the full requirements. There should be no double counting of FREL between Services Members.

**Net Summer Generating Capacity** The maximum summer rated capacity, modified for ambient limitations, that a generating unit can sustain over a specified period, less the capacity used to supply the demand of station service or auxiliary needs. For jointly owned units, the Net Capacity will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

**Circuit Miles of Transmission Facilities** The distance (following the path of transmission facility) in miles between substations or switching stations times the number of circuits at the same voltage level. For jointly owned transmission facilities, the Circuit Miles of Transmission Facilities will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

(ii) Affiliate Members. The fee for an Affiliate Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Affiliate Member, only participating in Regional Entity Activities, shall be waived.

(iii) Adjunct Members. The fees for an Adjunct Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Adjunct Member, only participating in Regional Entity Activities, shall be waived.

**Section 6.3 Fees.** The Member Services membership fee shall be due and payable concurrent with the submission of the written application for membership. The initial membership fee will be prorated on an annual basis depending upon the quarter in which a Member joins. Thereafter, membership fees shall be due and payable on or before January 1st of each year or in installments as determined by the Board. The FRCC shall notify, in writing, any Member who is delinquent in the payment of any applicable membership fee. The notice shall provide a time certain, not to exceed thirty days (30) days from the date of the written notice, during which any such delinquency may be cured. Failure to cure a delinquency within the stated time will result in the loss of all membership rights and designations. In the event of an uncured lapse in the payment of a fee, membership in the FRCC shall be terminated.

**Section 6.4 Staff.** The FRCC shall employ a staff, including the CEO, to carry out the objectives of the organization. The CEO shall be a non-voting Director of the Board. The duties of the CEO are as defined in Article IV, Section 4.1.

**Section 6.5 Expenses.** The personal expenses of each Member and Director participating in the activities of the FRCC and its committees and subcommittees shall be borne by the Member on whose behalf such person is acting, unless determined otherwise by the Board.

**Section 6.6 Minimum Sector Membership.** If the number of Voting Members of a Sector is not greater than one (1), such Sector shall not be entitled to a vote at the Voting Members meetings, Board of Directors meetings, or the Standing Committee meetings.

**Section 6.7 Indemnification.** The FRCC shall indemnify and hold harmless, to the maximum extent permitted by law, any Member, Director, Member representative, agent, officer or employee of the FRCC and the heirs, estates, successors or assigns of any of them, from any and all claims or liabilities, including costs or attorneys' fees for defending against assertion of any such claim or liability, arising from any act or failure to act of such person for, on behalf of, or at the direction of the FRCC, unless such act or failure to act constituted a willful violation of state, federal or local law, willful misconduct, or gross negligence. With the approval of the Board, the FRCC may reimburse costs, attorneys fees, and other expenses for defending against assertions of any such claims or liabilities prior to the final disposition of any such proceeding. The foregoing rights to be indemnified, held harmless, or reimbursed shall not operate in derogation or prohibition of any other rights which the person indemnified, held harmless or reimbursed may have. The FRCC, by vote of the Board, shall purchase insurance against all or any part of the liabilities which may be incurred by the FRCC and may cause the FRCC to indemnify and hold harmless as and to the extent it may deem appropriate such other person or persons as it may deem appropriate.

**Section 6.8 Fiscal Year.** The fiscal year of the FRCC shall be the twelve (12) month period of January 1<sup>st</sup> through December 31<sup>st</sup>.

**Section 6.9 Depositories.** All funds of the FRCC shall be deposited in the name of the FRCC in such bank, banks or other financial institutions as the CEO shall from time to time designate and shall be drawn out on checks, drafts or other orders signed on behalf of the FRCC by such person or persons as the Board shall from time to time designate.

## ARTICLE VII

### Amendments

**Section 7.1 Amendments.** Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership, subject to the provisions of Section 1.2, and subject to the requirements for approval by NERC and the Federal Energy Regulatory Commission applicable to the FRCC as a Regional Entity, these Bylaws may be amended, altered, or repealed through the following procedure:

(a) Any Voting Member or Director may suggest amendments to these Bylaws. Such suggestions must include a proposed amendment, and any necessary supporting documents. They should be sent to the CEO of FRCC for placement on the agenda for a Board meeting in the time and manner prescribed by the Board.

(b) If the proposal is approved by the Board of Directors, the Board shall place the proposal on the agenda of either the next Annual Meeting of the Voting Members, or pursuant to Board discretion, at a Special Meeting of the Voting Members called for that purpose.

(c) Voting Members shall vote to enact the Board-approved amendment in accordance with Sections 2.5 and 2.6, and subject to the provisions of Section 1.2 of the Bylaws.

**Section 7.2 Review of Governance.** The Board shall appoint a task force to review these Bylaws, and to submit recommendations to the Board on necessary amendments, at the discretion of the Board or if any of the following events occurs. Such task force shall include representation from each Sector.

(a) The number of Voting Members in a Sector is not greater than one (1).

(b) A Regional Transmission Organization of any type is approved by the Federal Energy Regulatory Commission to operate in the FRCC Region.

(c) Any federal or state legislation or regulatory action that significantly alters the functions of the FRCC.

(d) Any new entity that has or is expected to have financial transactions in the wholesale electric market in the FRCC Region wishes to join the FRCC, and does not otherwise meet the membership requirements as then defined in these Bylaws.



## ARTICLE VIII

### Observers of the Board

**Section 8.1 Observers of the Board.** The Chairman of the Florida Public Service Commission, or designee, shall be invited to attend meetings of the Board. The Board shall invite other observers as the Board deems appropriate.

## ARTICLE IX

**Section 9.1 Board Compliance Committee.** FRCC shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be the FRCC Board Compliance Committee (BCC), a balanced compliance panel reporting directly to the FRCC's Board of Directors.

The BCC will consist of one (1) Voting Member from each of the six (6) sectors in the FRCC, who shall be a member of the Board of Directors. Each year, two (2) members from each Sector of the FRCC Board of Directors will volunteer to serve in a BCC pool. At the time a hearing request is received, the Chair of the FRCC Board of Directors will appoint one member from each Sector to form the BCC for that hearing. The Board Member from the Registered Entity that has requested the hearing will not be selected for that BCC. In the event one (1) Sector of the FRCC declines to participate on the BCC, the Chair of the Board of Directors shall randomly select one (1) additional BCC member from the remaining five (5) Sectors to constitute the BCC. The Chair of the FRCC Board of Directors will appoint a Chair and Vice-Chair of the BCC. Terms of BCC members will be equivalent to the time it takes to complete the hearing for which they were selected. Members may be re-appointed to subsequent terms without any limits to the number of terms they serve.

FRCC Industry Sectors are as follows:

- One (1) Member from the Investor Owned Utility Sector
- One (1) Member from the Suppliers Sector
- One (1) Member from the Non-Investor Owned Utility Wholesale Sector
- One(1) Member from the Load Serving Entity Sector
- One (1) Member from the Generating Load Serving Entity Sector
- One (1) Member from the General Sector

Each member of the BCC shall be a full voting member. There will be no alternates or proxies for the BCC members. Decisions of the BCC shall require (i) a quorum to be present requiring at least fifty (50) percent of the number of members assigned to the BCC provided, however, that

in each case at least four (4) eligible Sectors are represented and (ii) a majority vote of the members of the BCC voting on the decision.

## **ARTICLE X**

### **Audit**

**Section 10.1 Audit.** The Board shall engage a certified public accounting firm to audit the books and accounts of the FRCC for each fiscal year.

## **ARTICLE XI**

### **Miscellaneous Provisions**

**Section 11.1 Headings.** The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

**Section 11.2 Number and Gender.** All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.

**Section 11.3 Parties Bound.** These Bylaws will bind and inure to the benefit of any Members, Director, Member representative, agent, officer, or employee of the FRCC and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

**Section 11.4 Minority Positions.** Any Voting Member or Standing Committee Representative who has a minority opinion on any significant issue may present the minority opinion to the Board in a manner as prescribed by the Board.

Amended: February 6, 2009

**APPENDIX A**

**Voting Member Agreement - Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Voting Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Voting Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Affiliate Member Agreement – Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Affiliate Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Affiliate Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Adjunct Member Agreement – \_\_\_\_\_ Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Adjunct Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Adjunct Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

## **HISTORY OF REVISIONS**

**January, 1998**

**Amended December 19, 2001**

**Amended March 2, 2006**

**Amended September 25, 2007**

**Amended June 27, 2008**

**Amended February 6, 2009**

## Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

### COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA [add reference to any applicable authorities in Canada and Mexico]. No regional reliability standard shall be effective within the [Regional Entity Name] area unless filed by NERC with FERC [and applicable authorities in Canada and Mexico] and approved by FERC [and applicable authorities in Canada and Mexico].

### COMMON ATTRIBUTE 2

[Regional Entity Name] regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A [Regional Entity Name] reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

### COMMON ATTRIBUTE 3

[Regional Entity Name] regional reliability standards, when approved by FERC [add applicable authorities in Canada], shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the [Regional Entity Name] area, regardless of membership in the region.

### COMMON ATTRIBUTE 4

**Requester** — The requester is the sponsor of the regional reliability standard request and may assist in the development of the standard. Any member of [Regional Entity Name], or group within [Regional Entity Name] shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the [Regional Entity Name] area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

## **COMMON ATTRIBUTE 5**

**[Standards or other named] committee** — The [Regional Entity Name] [standards] committee manages the standards development process. The [standards] committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the [Regional Entity Name] board on standards presented for adoption.

## **COMMON ATTRIBUTE 6**

*[Alternative 6A: For a Regional Entity that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee is a balanced stakeholder committee, inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system. [The [standards] committee votes to approve standards.] See Appendix A for the representation model of the [standards] committee.

*[Alternative 6B: For a Regional Entity that chooses to vote using a balanced ballot body of stakeholders.]*

**[Registered ballot body]** — The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with [Regional Entity Name] as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

## **COMMON ATTRIBUTE 7**

[Regional Entity Name] will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the [Regional Entity Name] and NERC websites.

## **COMMON ATTRIBUTE 8**

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.



### **COMMON ATTRIBUTE 9**

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

### **COMMON ATTRIBUTE 10**

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

### **COMMON ATTRIBUTE 11**

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the [Regional Entity Name] website within [no greater than 30] days of acceptance by the committee.

### **COMMON ATTRIBUTE 12**

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

### **COMMON ATTRIBUTE 13**

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the [Regional Entity Name] website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to [Regional Entity Name] stakeholders and other potentially interested entities, both within and outside of the [Regional Entity Name] area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

### **COMMON ATTRIBUTE 14**

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the [Regional Entity Name] website no later than the next posting of the proposed standard.

### **COMMON ATTRIBUTE 15**

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

### **COMMON ATTRIBUTE 16**

The standards process manager shall schedule a vote by the [Regional Entity Name] [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

### **COMMON ATTRIBUTE 17**

*[Alternative 17A: For an RE that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards]

committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

[Alternative 17B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

The [Regional Entity Name] registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

### **COMMON ATTRIBUTE 18**

[Alternative 18A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard.

[Alternative 18B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

All members of [Regional Entity Name] are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

### **COMMON ATTRIBUTE 19**

[Alternative 19A: For an RE that chooses to vote using a balanced stakeholder committee.]

Actions by the committee shall be recorded in the regular minutes of the committee.

[Alternative 19B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

### **COMMON ATTRIBUTE 20**

Under no circumstances may the board substantively modify the proposed regional reliability standard.

### COMMON ATTRIBUTE 21

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada and Mexico.]

### COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the [Regional Entity Name] bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in [Regional Entity Name], and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the [Regional Entity Name] members and others.

### COMMON ATTRIBUTE 23

- **Balanced** - The [Regional Entity Name] standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

### COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the [Regional Entity Name] area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

### COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

### **COMMON ATTRIBUTE 26**

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

### **COMMON ATTRIBUTE 27**

- Does not unnecessarily delay development of the proposed reliability standard.

### **COMMON ATTRIBUTE 28**

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

### **COMMON ATTRIBUTE 29**

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

### **COMMON ATTRIBUTE 30**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

### **COMMON ATTRIBUTE 31**

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

### **COMMON ATTRIBUTE 32**

<b>Applicability</b>	<p>Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.</p> <p>If not applicable to the entire [Regional Entity Name] area, then a clear identification of the portion of the bulk power system to which the standard applies.</p> <p>Any limitation on the applicability of the standard based on electric facility requirements should be described.</p>
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### **COMMON ATTRIBUTE 33**

<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
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### **COMMON ATTRIBUTE 34**

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"><li>• The specific data or information that is required to measure performance or outcomes.</li><li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li><li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li><li>• The entity that is responsible for evaluating data or</li></ul>
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	<p>information to assess performance or outcomes.</p> <ul style="list-style-type: none"><li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li><li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li><li>• Violation severity levels.</li></ul>
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EXHIBIT C  
TO PRO FORMA DELEGATION AGREEMENT

**FRCC REGIONAL RELIABILITY STANDARD  
DEVELOPMENT PROCESS**

*Amended September 25, 2007*



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# I. Introduction and Background

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## *Purpose*

This manual establishes the process for development, revision, withdrawal and approval of FRCC Regional Reliability Standards for the FRCC Region. FRCC Regional Reliability Standards apply to the reliability planning and reliable operation of the Bulk Power System in the FRCC Region. Proposed FRCC Regional Reliability Standards shall be subject to approval by the North American Electric Reliability Corporation (NERC), as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the Federal Power Act. FRCC Regional Reliability Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators and users within the FRCC Region, regardless of membership in the region.

The FRCC Regional Reliability Standards Development Process is based on providing an open and fair process that ensures all interested and affected parties have an opportunity to participate in the development of FRCC Regional Reliability Standards. Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the reliability of the FRCC Bulk Power System has a right to participate by: a) expressing a position and its basis, b) having that position considered, c) voting on and d) having the right to appeal.

## *FRCC Regional Reliability Standard Principles*

FRCC Regional Reliability Standards go beyond, add detail to, or implement NERC Reliability Standards, or cover matters not addressed in NERC Reliability Standards. FRCC Regional Reliability Standards shall not be inconsistent with or less stringent than NERC Reliability Standards.

FRCC Regional Reliability Standards are based on NERC's Reliability Principles and Market Interface Principles. Each FRCC Regional Reliability Standard shall enable or support one or more of NERC's Reliability Principles and must accommodate competitive electricity markets by being consistent with NERC's Market Interface Principles.

The FRCC Regional Reliability Standard Development Process defines the fair and open process for development, revision, withdrawal and approval of FRCC Regional Reliability Standards for the FRCC Region and has the following characteristics:

- **Due Process** – Any interested party, or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System has a right to participate in this process as indicated in this manual.
- **Openness** – Participation is open to any interested party or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System. Participation shall not be conditional upon membership in the FRCC. All FRCC Regional Reliability Standard development meetings will be open and noticed on the FRCC website.

- **Balance** – The FRCC Regional Reliability Standard Development Process shall have a balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

## II. FRCC Regional Reliability Standard Definition, Characteristics, and Elements

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### *Definition*

A FRCC Regional Reliability Standard defines certain obligations or requirements of all owners, operators and users of the FRCC Bulk Power System regardless of membership in the FRCC. The obligations or requirements must be material to reliability and measurable. Each obligation and requirement shall support one or more of the NERC reliability principles and shall be consistent with all of the NERC reliability and market interface principles.

FRCC Regional Reliability Standards go beyond, add detail to, or implement NERC reliability standards, or cover matters not addressed in NERC reliability standards. FRCC Regional Reliability Standards shall not be inconsistent with or less stringent than NERC reliability standards.

### *Characteristics*

A FRCC Regional Reliability Standard shall have the following characteristics:

- **Material to Reliability** - A FRCC Regional Reliability Standard shall be material to the reliability of the FRCC Bulk Power System. If the reliability of the FRCC Bulk Power System could be compromised without a particular standard or by a failure to comply with that standard, then the standard is material to reliability.
- **Measurable** - A FRCC Regional Reliability Standard shall establish technical or performance requirements that can be practically measured.
- **Relative to NERC Reliability Standards** - A FRCC Regional Reliability Standard must go beyond, add detail to, or implement NERC reliability standards, or cover matters not addressed in NERC reliability standards.

Although FRCC Regional Reliability Standards have a common format and process, several types of Reliability Standards may exist, each with a different approach to measurement:

- **Technical standards** related to the provision, maintenance, operation, or state of Bulk Power System will likely contain measures of physical parameters and will often be technical in nature.
- **Performance standards** related to the actions of entities providing for or impacting the reliability of the FRCC Bulk Power System will likely contain measures of the results of such actions, or the nature of the performance of such actions.
- **Preparedness standards** related to the actions of entities to be prepared for conditions that are unlikely to occur but are critical to reliability will likely contain measures of such preparations or the state of preparedness.

## *Elements*

A FRCC Regional Reliability Standard shall consist of the elements identified in this section of this manual. These elements are intended to apply a systematic discipline in the development and revision of Reliability Standards. The format allows a clear statement of the purpose, requirements, measures, and compliance elements associated with each Reliability Standard. Supporting documents to aid in the implementation of a Reliability Standard may be referenced by the Reliability Standard but are not part of the Reliability Standard itself.

### Performance Elements of a FRCC Regional Reliability Standard

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference.
<b>Title</b>	A brief, descriptive phrase identifying the topic of the Reliability Standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.  If not applicable to the entire FRCC, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
<b>Effective Date and Status</b>	The effective date of the Reliability Standard or, the proposed effective date.
<b>Purpose</b>	The purpose of the Reliability Standard. The purpose shall explicitly state what outcome will be achieved or is expected by this Reliability Standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory. Any additional comments or statements for which compliance is not mandatory, such as background or explanatory information should be placed in a separate document and referenced.
<b>Risk Factor(s)</b>	The potential reliability significance of each requirement, designated as a High, Medium or Lower Risk Factor in accordance with the criteria listed below:  A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor and control the FRCC Bulk Power System; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative

	<p>conditions anticipated by the preparations, be expected to affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor, control, or restore the FRCC Bulk Power System.</p> <p>A Medium Risk Factor requirement (a) is one that, if violated, could directly affect the electrical state or the capability of the FRCC Bulk Power System but is unlikely to lead to FRCC Bulk Power System instability, separation, or cascading failures; or (b) is a requirement in the planning time frame that , if violated, could under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor and control the FRCC Bulk Power System but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to FRCC Bulk Power System instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to FRCC Bulk Power System instability, separation, or a cascading sequence of failures, or could place the FRCC Bulk Power System at an unacceptable risk of instability, separation, or cascading failures, or (b) is a requirement in a planning time frame that, if violated, could under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to FRCC Bulk Power System instability, separation, or a cascading sequence of failures, or could place the FRCC Bulk Power System at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.</p>
<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measures. Measures that will be used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure identifies to whom the measure applies and the expected level of performance or outcomes required to demonstrate compliance. Each measure shall be tangible, practical, and as objective as is practical. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
<b>Compliance Monitoring Process</b>	<p>The compliance elements define:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible to provide the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> </ul>

	<ul style="list-style-type: none"> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> </ul>
<b>Violation Severity Levels</b>	Defines the degree to which compliance with a requirement was not achieved. The violation severity levels, are part of the standard and are approved with the standard.



### **III. Roles in the FRCC Regional Reliability Standard Development Process**

#### ***Nomination, Modification, or Withdrawal of A Regional Standard***

Any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, shall be allowed to request that a FRCC Regional Reliability Standard be developed, modified, or withdrawn. Additionally, any interested party or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System shall be allowed to request that a FRCC Regional Reliability Standard be developed, modified, or withdrawn.

#### ***Standard Development Process Roles***

**FRCC Board of Directors** – The FRCC Board of Directors shall consider for adoption as FRCC Regional Reliability Standards, those Standards that have been developed and approved by this process. Once the Board adopts a FRCC Regional Reliability Standard, such Standard shall be submitted to NERC for approval. When approved by NERC, it will be submitted to FERC for approval.

**Registered Ballot Body (RBB)** – The registered ballot body votes to approve FRCC Regional Reliability Standards. The RBB comprises all entities or persons that qualify for one of the FRCC Industry Sectors as defined in Section 1.2 of the FRCC Bylaws, and are registered with FRCC as potential ballot participants in the voting on standards. FRCC membership is not a requirement to participate in the development of and voting on FRCC Regional Reliability Standards. Any entity or person that has a material interest in the reliability of the FRCC Bulk Power System shall be allowed to register as potential ballot participants in the RBB. (See Appendix C)

**Ballot Pool (BP)** – Each standard action has its own BP formed of interested members of the RBB. The BP comprises those members of the RBB that respond to a pre-ballot survey for that particular standard that indicates their desire to participate in the ballot of that standard. The BP will vote to approve each FRCC Regional Reliability Standard.

**FRCC Operating Committee (OC) and FRCC Planning Committee (PC)** – The FRCC OC and the FRCC PC (both of which are balanced stakeholder committees, see Appendix C) shall have the primary responsibility for the development, modification or withdrawal of FRCC Regional Reliability Standards.

**FRCC Standards Process Manager** – The FRCC Regional Reliability Standard Development Process shall be administered by the FRCC Standards Process Manager. The FRCC Standards Process Manager will ensure the integrity of the process and the consistency of quality and completeness of the FRCC Regional Reliability Standards. The FRCC Standards Process Manager will facilitate all steps in this process, and will coordinate with NERC to ensure required information is posted on both NERC and FRCC websites.

**Standard Drafting Team** – A team of technical experts, such as FRCC Subcommittees, Working Groups, Task Forces, or the FRCC Staff, will be appointed by the FRCC OC and/or PC, that will:

- Develop the details of the FRCC Regional Reliability Standard,
- Consider and respond to industry comments,
- Participate in forums to help build consensus on draft FRCC Regional Reliability Standards,
- Assist in the implementation of approved FRCC Regional Reliability Standards,
- Provide technical oversight in response to changing industry conditions,
- Assist in the identification of the need for new FRCC Regional Reliability Standards.

**FRCC Compliance Staff** – The FRCC compliance staff provides input and comments during the standard development process to ensure the requirements are not ambiguous, that measures will be effective and that the compliance elements of a standard can be practically implemented.

## **IV. Steps in Developing a FRCC Regional Reliability Standard**

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### **Step 1 – Request a new FRCC Regional Reliability Standard or modification to, or withdrawal of an existing FRCC Regional Reliability Standard**

A request to develop, modify or withdraw a FRCC Regional Reliability Standard shall be submitted to the FRCC Standards Process Manager (via email to FRCCStandard@frcc.com) by any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, or any interested party or any entity that is directly and materially affected by reliability of the FRCC Bulk Power System. The FRCC Standards Process Manager will acknowledge receipt of the request within fifteen (15) calendar days of its receipt.

### **Step 2 – Assignment of FRCC Regional Reliability Standard Request**

The FRCC Standards Process Manager will assign the request to the FRCC OC, the FRCC PC, or both as appropriate.

### **Step 3 – Posting of FRCC Regional Reliability Standard Request**

The request for standard development, modification or withdrawal will be posted for notification and comment on the FRCC public website for a period of fifteen (15) calendar days, and will be reviewed by the FRCC OC and/or PC. A notice of the posting for comment will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek input on the proposed request.

### **Step 4 – Acceptance of a FRCC Regional Reliability Standard Request**

The FRCC OC and/or the PC will review the request and any comments submitted to determine if the request received will be accepted or rejected within sixty (60) days of its submission. The decision will be posted and, if accepted, the OC and/or the PC will assign and direct a Standard Drafting Team to develop the draft Regional Reliability Standard. If the request is rejected, the FRCC Standards Process Manager will send notification to the entity making the request and to all entities that received the notice in Step 3 above.

### **Step 5 – Drafting and Posting of a FRCC Regional Reliability Standard**

The FRCC OC and/or PC will assign a Standard Drafting Team, within 60 days of acceptance of the request, to develop, in a timely manner, a draft FRCC Regional Reliability Standard that will address the accepted request. The FRCC OC and/or PC may provide a timeframe that is desired for completion of the standard development.

Under the direction of the FRCC OC and/or PC, the Standard Drafting Team, will consider all comments received on the posting of the standard request and will develop a draft FRCC Regional Reliability Standard and corresponding implementation plan.

The draft FRCC Regional Reliability Standard, implementation plan and any supporting documents shall be posted for comments on the FRCC public website for a period of fifteen (15) calendar days, or such longer period as determined by the drafting team or as directed by the FRCC OC and/or the PC. Notice of the posting will go out to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public

Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek comments.

Comments shall be submitted (via email) to the FRCC Standards Process Manager (FRCCStandard@frcc.com). All comments are due by the close of business on the 15<sup>th</sup> calendar day of posting, or such later date as determined by the drafting team or as directed by the FRCC OC and/or PC. If the comment due date falls on a weekend or nationally recognized holiday, the comments shall be due by the close of business on the next regularly scheduled business day.

### **Step 6 – Standards Drafting Team Review of Comments**

All comments should be submitted electronically to the FRCC Standards Process Manager who will forward to the Standard Drafting Team for consideration. All timely comments will be considered.

Under the direction given by the FRCC OC and/or the PC, the Standard Drafting Team will review the comments received and revise the draft FRCC Regional Reliability Standard and/or implementation plan as needed. The Standard Drafting Team will develop written responses to each comment received.

All responses to the submitted comments will be documented and posted on the FRCC public website. If needed, a second draft of the FRCC Regional Reliability Standard will be posted for another comment period. Such comment period shall be fifteen (15) calendar days, or such longer period as determined by the drafting team or as directed by the FRCC OC and/or PC.

Notice of the posting will go out to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek comments.

Based on comments received to the posting, Step 6 will be repeated as necessary until the Standards Drafting Team believes the draft FRCC Regional Reliability Standard is ready to submit to the Ballot Pool for approval.

### **Step 7 –Establishment of Ballot Pool**

The Standard Drafting Team shall submit the final draft of the proposed FRCC Regional Reliability Standard, along with any minority opinions, and all comments and written responses received during the posting(s), to the FRCC Standards Process Manager. The FRCC Standards Process Manager shall establish a Ballot Pool for standard action at least fifteen (15) calendar days prior to the start of a ballot. A pre-ballot survey will be sent to each entity of the RBB to determine their desire to be placed in the Ballot Pool. Once the ballot period opens, the Ballot Pool will be closed and changes to the Ballot Pool participation will not be allowed.

### **Step 8 – Ballot of the new or revised FRCC Regional Reliability Standard**

The FRCC Standards Process Manager will post the final draft of the standard on the FRCC website at least fifteen (15) calendar days before a ballot can begin. The Ballot Pool shall have a minimum of ten (10) calendar days to vote on a standard. The Ballot Pool may vote to approve or not approve the standard. If approved, the FRCC Standards Process Manager will submit the FRCC Regional Reliability Standard, proposed implementation plan, and any supporting documents to the FRCC Board of Directors for adoption.

If approval by the Ballot Pool is not obtained, the PC and/or OC will determine if the draft standard is to be sent back to the standard drafting team to repeat step 6 to incorporate any comments, or to take no further action.

If no further action is taken, the reason for such will be posted on the FRCC public website. A notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.

### **Step 9 – Adoption of FRCC Regional Reliability Standards by the FRCC Board of Directors**

At a regular or special meeting, the FRCC Board of Directors may consider adoption of the proposed FRCC Regional Reliability Standard that has been approved by the RBB Ballot Pool. A FRCC Regional Reliability Standard submitted for adoption by the FRCC Board of Directors must be posted for notification and comment on the FRCC public website at least ten (10) calendar days prior to action by the FRCC Board of Directors. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator. The FRCC Board of Directors shall consider the comments received, the responses provided, and any dissenting opinions. The FRCC Board of Directors shall adopt or reject a FRCC Regional Reliability Standard as submitted, but may not modify the proposed FRCC Regional Reliability Standard. If the FRCC Board of Directors chooses not to adopt a FRCC Regional Reliability Standard, it shall provide its reasons for not doing so.

If the FRCC Board of Directors chooses not to adopt the proposed FRCC Regional Reliability Standard, the reason for such decision will be posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.

### **Step 10 – Submission to NERC and FERC**

Once the FRCC Regional Reliability Standard is adopted by the FRCC Board of Directors, the FRCC Standard Process Manager shall submit the FRCC Regional Reliability Standard to NERC for approval. When approved by NERC, it shall be submitted by NERC to FERC for approval. If NERC or FERC rejects the FRCC Regional Reliability Standard, the FRCC Board of Directors will determine if the standard is to be sent back to the OC and/or PC to incorporate their comments or to take no further action on the standard. A FRCC Regional Reliability Standard that is adopted by the FRCC Board of Directors, approved by NERC and FERC, shall become effective on a date designated by FERC.

## V. Special Procedures

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### *Urgent Action*

Under certain conditions, the entity making the request or the FRCC OC and/or the PC may designate a proposed or revised FRCC Regional Reliability Standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed or revised FRCC Regional Reliability Standard will materially impact reliability of the Bulk Power System in the FRCC Region. The FRCC OC and/or the PC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a FRCC Regional Reliability Standard.

The entity making the request, or the FRCC OC and/or the PC, will prepare a draft of the proposed FRCC Regional Reliability Standard and submit it to the Standards Process Manager for urgent action. The submission must include a justification for the urgent action. The Standards Process Manager shall immediately post the draft as specified in Step 5. The posting shall be a minimum of ten (10) calendar days before the RBB can consider the draft for approval. All comments received during the posting will be considered. Once approved by the RBB, the proposed urgent FRCC Regional Reliability Standard will be sent to the FRCC Board of Directors for adoption.

A FRCC Regional Reliability Standard that is adopted by the FRCC Board of Directors, as an urgent action shall have a termination date specified that shall not exceed 180 days from the approved date. Should there be a need to make the FRCC Regional Reliability Standard permanent, the replacement FRCC Regional Reliability Standard would be required to go through the full standards development process.

An urgent action FRCC Regional Reliability Standard that expires may be renewed by the FRCC Board of Directors using the urgent action process again, in the event a permanent FRCC Regional Reliability Standard has not been adopted. In determining whether to authorize the extension of an urgent action FRCC Regional Reliability Standard, the FRCC OC and/or the PC shall consider the impact to the reliability of the FRCC Bulk Electric System of not continuing the FRCC Regional Reliability Standard. In addition, consideration will be given to whether expeditious progress is being made toward a permanent replacement.

The FRCC OC and/or the PC shall not request the FRCC Board of Directors to extend an urgent action FRCC Regional Reliability Standard if there is insufficient progress toward adopting a permanent replacement FRCC Regional Standard or if the FRCC OC and/or the PC lack confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action FRCC Regional Reliability Standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement FRCC Regional Reliability Standard. With these principles, there is no pre-determined limit on the number of times an urgent action may be renewed. However, each urgent action FRCC Regional Reliability Standard renewal shall be effective only upon adoption by the FRCC Board of Directors, and approval by NERC and FERC.

## ***Interpretations of Standards***

Any member of the FRCC, or group within the FRCC, or an entity that is directly and materially affected by reliability of the FRCC Bulk Power System shall be permitted to request an interpretation of a FRCC Regional Reliability Standard. The entity requesting an interpretation shall send a request to the FRCC Standards Process Manager explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party, or others, caused by the lack of clarity or a possible incorrect interpretation of the FRCC Regional Reliability Standard. The FRCC Standards Process Manager will assemble a team with the relevant expertise to address the clarification.

As soon as practical (but not more than thirty (30) calendar days following the receipt of the request), the team will draft a written interpretation of the FRCC Regional Reliability Standard addressing the issues raised. The FRCC Standards Process Manager will submit the written interpretation to the OC and/or PC for review and approval. If approved by the FRCC OC and/or the PC, the interpretation is appended to the FRCC Regional Reliability Standard and is effective immediately. The interpretation will stand until such time as the FRCC Regional Reliability Standard is revised through the normal process, at which time the FRCC Regional Reliability Standard will be modified to incorporate the clarifications provided by the interpretation.

## ***Appeals***

Any member of the FRCC, or group within the FRCC, or any entity that is directly and materially affected by reliability of the FRCC Bulk Power System, and who feel they have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, or withdrawal of a FRCC Regional Reliability Standard shall have the right to appeal. This appeals process applies only to the FRCC Regional Reliability Standards Process as defined in this document

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within thirty (30) calendar days of the date of the action purported to cause the adverse effect. The final decisions of any appeal shall be documented in writing and posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator .

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

### **Level 1 Appeal**

Level 1 is the required first step in this appeals process. The appellant submits to the FRCC Standards Process Manager a complaint in writing that describes the substantive or procedural action associated with a FRCC Regional Reliability Standard or the FRCC Regional Reliability Standards Process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the FRCC Standards Process Manager shall prepare a written

response addressed to the appellant as soon as practical but not more than forty-five (45) calendar days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the record associated with the FRCC Regional Reliability Standard.

## **Level 2 Appeal**

If after the Level 1 Appeal, the appellant remains unsatisfied with the resolution, notification shall be made in writing to the FRCC Standards Process Manager. Within thirty (30) calendar days of receiving the notification, the FRCC Standards Process Manager shall convene a Level 2 Appeals Panel. This panel shall consist of five members appointed by the FRCC Board of Directors. In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The FRCC Standards Process Manager shall post on the FRCC public website the notice of the Level 2 appeal and other relevant materials. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator. At least fifteen (15) calendar days notice of the meeting of the Level 2 Appeals Panel will be made. In addition to the appellant, any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System, and who is directly and materially affected by the substantive or procedural action referenced in the complaint shall be heard by the panel.

The Level 2 Appeals Panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The Level 2 Appeals Panel may in its decision find for the appellant and remand the issue to the FRCC OC and/or the PC for resolution with a statement of the issues and facts in regard to which fair and equitable action was not taken. The Level 2 Appeals Panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections.

The Level 2 Appeals Panel may not, however, revise, approve, disapprove, or adopt a FRCC Regional Reliability Standard, as these responsibilities remain with the FRCC Board of Directors. The actions of the Level 2 Appeals Panel shall be posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.



## **VI. Maintenance of the FRCC Regional Reliability Standards and Process**

### ***Requests to Revise the FRCC Regional Reliability Standard Development Process***

Any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System may submit a written request to modify the FRCC Regional Reliability Standard Development Process Manual. The FRCC Standards Process Manager shall oversee the handling of the request. The FRCC OC and/or the PC shall review the request and submit recommendations to the FRCC Board of Directors for consideration. The FRCC Board of Directors, on its own motion, may amend the FRCC Regional Reliability Standard Process.

### ***Five-Year Review***

Each FRCC Regional Reliability Standard shall be reviewed at least once every five (5) years. The review date will be determined from the effective date or the latest revision date whichever is later. The review process shall be conducted in accordance with Steps 1 through 10 of the FRCC Regional Reliability Standard Development Process Manual. As a result of this review, a FRCC Regional Reliability Standard shall be reaffirmed, revised, or withdrawn.

### ***Filing of FRCC Regional Standards with Regulatory Agencies***

All adopted FRCC Regional Reliability Standards will be filed with FERC.

APPENDIX A

Email completed form to [FRCCStandard@frcc.com](mailto:FRCCStandard@frcc.com)

**FRCC Regional Reliability Standard Request Form**

Title of Proposed Standard
Request Date

<b>Requestor Information</b>	<b>TYPE</b> (Check a box for each one that applies)
Name	<input type="checkbox"/> New Standard
Primary Contact	<input type="checkbox"/> Revision to existing Standard
Telephone	<input type="checkbox"/> Withdrawal of existing Standard
Fax	
Email	<input type="checkbox"/> Urgent Action

**Purpose** (Describe the purpose of the standard – what the standard will achieve in support of reliability)

**Industry Need** (Provide a detailed statement justifying the need for the proposed standard, along with any supporting documentation)

**Brief Description** (Describe the proposed standard in sufficient detail to clearly define the scope in a manner that can be easily understood by others)

## FRCC Regional Reliability Standard Request Form

**The Standard will Apply to the Following Functions** (Check box for each one that applies)

<input type="checkbox"/>	Reliability Coordinator	Ensures the reliability of the bulk transmission system within its Reliability Authority area.
<input type="checkbox"/>	Balancing Authority	Integrates resource plans ahead of time, and maintains load-interchange-resource balance within its metered boundary and supports system frequency in real time
<input type="checkbox"/>	Planning Authority	Plans the Bulk Electric System
<input type="checkbox"/>	Resource Planner	Develops a long-term plan for the resource adequacy of specific loads within a Planning Authority area
<input type="checkbox"/>	Transmission Planner	Develops a long-term plan for the reliability of transmission systems within its portion of the Planning Authority area
<input type="checkbox"/>	Transmission Service Provider	Provides transmission services to qualified market agreements
<input type="checkbox"/>	Transmission Owner	Owens transmission facilities
<input type="checkbox"/>	Transmission Operator	Operates and maintains the transmission facilities, and executes switching orders
<input type="checkbox"/>	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer
<input type="checkbox"/>	Generator Owner	Owens and maintains generation unit(s)
<input type="checkbox"/>	Generator Operator	Operates generation units(s) and performs the functions of supplying energy and Interconnected Operations Services
<input type="checkbox"/>	Purchasing-Selling Entity	The function of purchasing or selling energy, capacity, and all necessary Interconnected Operations Services as required
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission (and related generation services) to serve the end user

**FRCC Regional Reliability Standard Request Form**

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**NERC Reliability Principles**

<b>Applicable Reliability Principles (Check box for all that apply.)</b>	
	1. Interconnected bulk electric systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
	2. The frequency and voltage of interconnected bulk electric systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
	3. Information necessary for the planning and operation of interconnected bulk electric systems shall be made available to those entities responsible for planning and operating the systems reliably.
	4. Plans for emergency operation and system restoration of interconnected bulk electric systems shall be developed, coordinated, maintained, and implemented.
	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected bulk electric systems.
	6. Personnel responsible for planning and operating interconnected bulk electric systems shall be trained, qualified, and have the responsibility and authority to implement actions.
	7. The security of the interconnected bulk electric systems shall be assessed, monitored, and maintained on a wide-area basis.

**NERC Market Interface Principles**

<b>Does the proposed Standard comply with all of the following Market Interface Principles?</b>	
Recognizing that reliability is an essential requirement of a robust North American economy:	
yes or no	1. A reliability standard shall not give any market participant an unfair competitive advantage.
yes or no	2. A reliability standard shall neither mandate nor prohibit any specific market structure.
yes or no	3. A reliability standard shall not preclude market solutions to achieving compliance with that standard.
yes or no	4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.

**FRCC Regional Reliability Standard Request Form**

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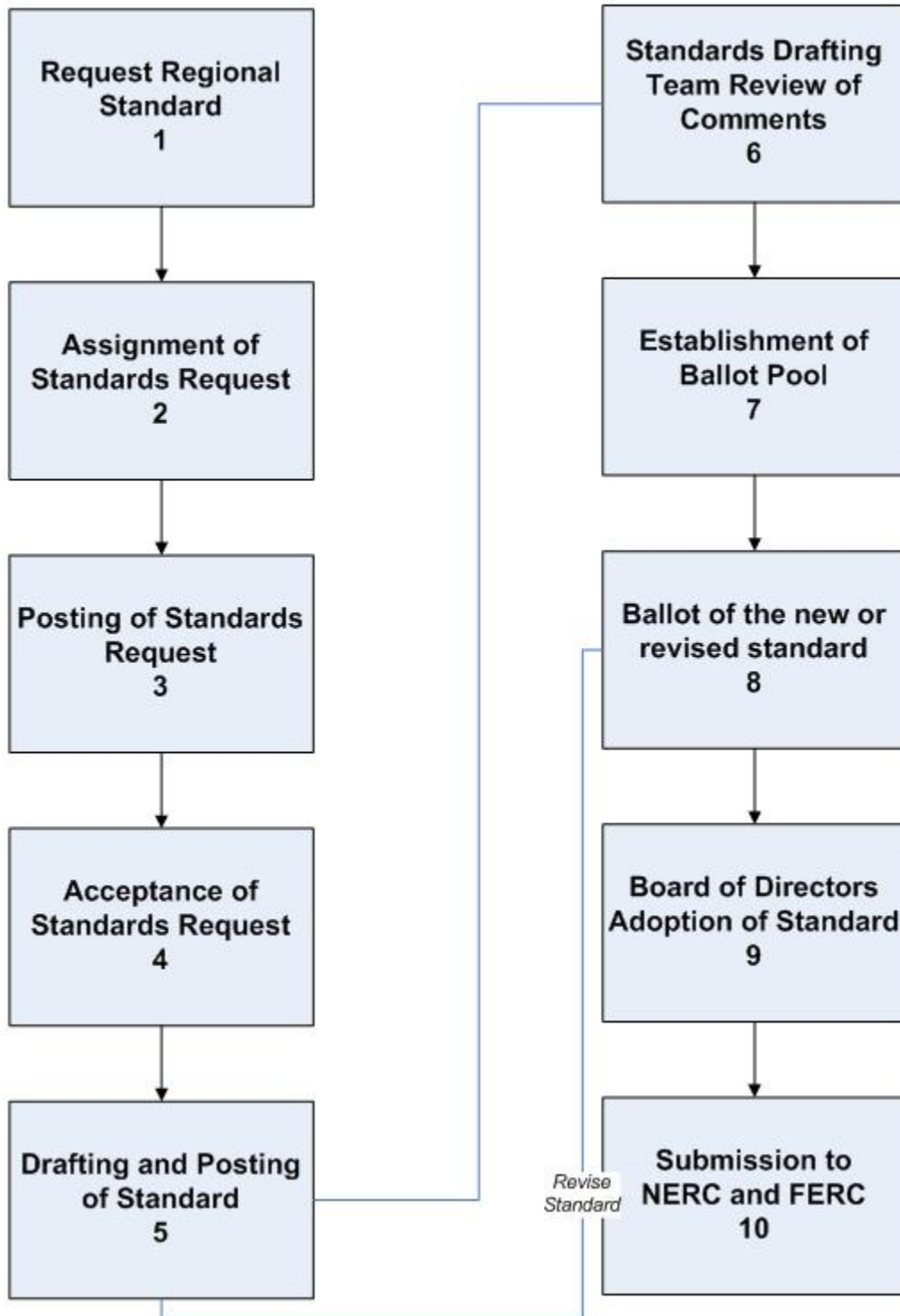
**Related Standards**

<b>Standard No.</b>	<b>Explanation</b>

<p><b>Proposed Implementation</b>                      <b>days after Board of Directors adoption or</b></p> <hr/> <p><b>On (date):</b></p>
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APPENDIX B

*Process Diagram*



## APPENDIX C

### Development of and Voting of the Registered Ballot Body

#### **1. Registration Procedures**

The Registered Ballot Body (RBB) comprises all entities<sup>1</sup> and persons that:

- Qualify for one of the FRCC Industry Sectors, and
- Are registered with the FRCC as potential ballot participants in the voting on FRCC Regional Reliability Standards.

All registrations will be done electronically. All entities and persons will self-select to belong to the RBB. The sectors shall be identical to those in Section 1.2 of the FRCC Bylaws.

All RBB members will have the ability to vote on a standard. Voting will be done in writing (either email or facsimile) with each RBB member having one vote. The RBB representative will have the right to register and participate in ballot pools to cast their vote on a standard being considered for approval.

#### **2. Sector Qualification Guidelines**

The general guidelines are as follows:

- An entity or person may register in the RBB in any Sector in which it qualifies for provided that an entity or person registers as a potential ballot participant in only one (1) Sector.
- Any individual currently employed by an organization that is eligible to join one or more of the other five (5) sectors, shall not be qualified to join as a General Sector RBB member.

#### **3. Ballot Pool Voting**

A Ballot Pool will be established to vote on any proposed standards action. Each RBB member choosing to belong to a Ballot Pool will have one individual vote. Two-thirds of the individual votes of the Ballot Pool shall constitute a quorum.

Approval of a FRCC Regional Reliability Standard requires the affirmative vote of a two-thirds majority of the weighted sector votes cast. The number of votes cast in each sector is the sum of the affirmative and negative votes, excluding abstentions.

The following steps will be used to determine if there is sufficient affirmative votes:

1. The number of affirmative votes cast in each sector will be divided by the sum of affirmative and negative votes cast to determine the fractional affirmative vote for each sector. Abstentions will not be counted.

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<sup>1</sup> An entity and all of its Affiliates (as defined in the FRCC Bylaws) shall be considered one entity for purposes of registering as a potential ballot participant.

2. The fractional affirmative vote for a sector will then be multiplied by the Sector Weight Factor to determine the weighted fractional affirmative vote for a sector. The Sector Weight Factors are:
  - a. Suppliers Sector: Weight Factor = 2.5
  - b. Non-Investor Owned Utility Wholesale Sector: Weight Factor = 2.0
  - c. Load Serving Entity Sector: Weight Factor = 1.0
  - d. Generating Load Serving Entity Sector: Weight Factor = 3.0
  - e. Investor Owned Utility Sector: Weight Factor = 3.5
  - f. General Sector: Weight Factor = 1.0
3. The sum of the weighted fractional affirmative votes from all sectors divided by the sum of the weights of the sectors voting will be used to determine if a two-thirds majority has been achieved. A sector will be considered as “voting” if any member of the sector in the Ballot Pool casts either an affirmative or negative vote.
4. A FRCC Regional Reliability Standard will be considered “approved” if the sum of the weighted fractional affirmative votes from all sectors divided by the sum of the weights of the voting sectors is two-thirds or greater.



## History of Revisions

Approved March 2, 2006

Amended July 25, 2006

Amended October 24, 2006

Amended September 25, 2007

## **EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

### **1.0 FRCC COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

#### **1.1 Obligations of Florida Reliability Coordinating Council, Inc.**

FRCC will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within FRCC’s geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the “Compliance Program”).

#### **1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program**

The FRCC has “customized” the NERC pro-forma document by changing “Compliance Enforcement Authority” and “Regional Entity” to “FRCC” where appropriate. FRCC has also removed any reference to “Applicable Governmental Authority” since our boundary is fully within the U.S. In addition, the following items are being identified to show where FRCC has provided additional process detail explaining how we will implement the NERC Compliance Monitoring and Enforcement Program. We believe these items add needed detail and clarification and do not constitute “deviations” from NERC’s Compliance Monitoring and Enforcement Program.

##### Section 1.1 - Definitions

The FRCC has added a definition for “Business Days”. Registered Entities may observe holidays differently than the FRCC. To ensure complete understanding of the term “business day” especially as it relates to the defined term “Required Date”, the FRCC has included the following definition:

*1.1.4 Business Days: Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule; New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day.*

The FRCC has included a definition of “Reliability Standard”. This was missing and needed clarification:

*1.1.19 Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.*

##### Section 2.0 – Identification of Organization Responsible for complying with Reliability Standards

In the first paragraph, the FRCC removed the word “promptly” and replaced it with “within thirty (30) days” to clarify the time frame for which a Registered Entity is to notify the FRCC with changes in its registration information. Promptly is an ambiguous term and the 30 day

timeframe corresponds with the minimum compliance monitoring period currently identified in NERC's Reliability Standards.

### Section 3.0 – Compliance Monitoring and Enforcement Processes

The FRCC has added a paragraph that identifies the use of our FRCC Compliance Committee in a non-decisional review process. After initial determination of an alleged violation by the FRCC Compliance Staff, and after required notification to NERC and the Registered Entity, the FRCC Compliance Staff may provide their determinations to the FRCC Compliance Committee for a technical review. This review will only be initiated by FRCC Compliance Staff. Such review shall only be called when it is deemed to help provide an increased understanding of how to comply with Reliability Standards. This is especially important for those standard requirements that may lack the clarity necessary to ensure compliance and increased reliability. In addition the results of this technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation. This review will not be used to determine penalties or sanctions for violations. The FRCC believes this process assures an increased understanding of standard requirements by both registered entities and compliance staff; helps build trust and transparency in the process and ultimately results in increased reliability to the bulk power system.

### Section 5.2 – Registered Entity Response

The FRCC has identified that a FRCC Board Compliance Committee will appoint a panel called the Compliance Advisory Panel to work with the Registered Entity to resolve any conflicts within the forty day period each time a Registered Entity contests an alleged violation and sanction and/or penalty. The FRCC believes this process will resolve many disputes, thereby reducing the number of costly and time consuming formal hearings.

The FRCC has added a timeframe of 10 business days for a Registered Entity to request a hearing if the dispute was not resolved in the 40 days working with the Compliance Advisory Panel. This timing was needed to clarify the timeframe for the decision to be made.

### Section 5.6 – Notice of Penalty

The FRCC changed the word “The” to “Any” at the beginning of the 2<sup>nd</sup> paragraph to provide needed clarification. Words were added in the preceding paragraph to clarify that NERC may revise a penalty or sanction that the FRCC submits. The word “The” in the 2<sup>nd</sup> paragraph seemed to refer only to the revised penalty which is incorrect. The 2<sup>nd</sup> paragraph applies to any penalty that is ultimately filed with FERC.

### Attachment 2 – Hearing Procedures

The FRCC accepted the Hearing Procedures developed jointly by the Regional Entities in the Eastern Interconnection. However, we have made some changes to add detail or clarify the document.

## Attachment 2 – Section 1.1.5 Definitions

Throughout Attachment 2 the FRCC has inserted the term “business” before days that are less than fifteen (15) to be consistent with the terminology in the body of the program document itself. This is supported by the inclusion of the definition of “business days” mentioned above. The FRCC added “and FRCC” to the first paragraph of this section to clarify that both the NERC pro-forma definitions and the FRCC added definitions are included.

## Attachment 2 – Section 1.2.5 Computation of Time

The FRCC has deleted this section as we believe it to be very confusing. The definition of “business days” and the addition of the term “business” to clarify business days from calendar days eliminate the need for this section. We left it intentionally blank to keep the numbering the same for the rest of the document.

## **2.0 REGIONAL HEARING OF COMPLIANCE MATTERS**

**FRCC** shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be the FRCC Board Compliance Committee (BCC), a balanced compliance panel reporting directly to the FRCC’s Board of Directors.

The BCC will consist of one (1) Voting Member from each of the six (6) sectors in the FRCC, who shall be a member of the Board of Directors. Each year, two (2) members from each Sector of the FRCC Board of Directors will volunteer to serve in a BCC pool. At the time a hearing request is received, the Chair of the FRCC Board of Directors will appoint one member from each Sector to form the BCC for that hearing. The Board Member from the Registered Entity that has requested the hearing will not be selected for that BCC. In the event one (1) Sector of the FRCC declines to participate on the BCC, the Chair of the Board of Directors shall randomly select one (1) additional BCC member from the remaining five (5) Sectors to constitute the BCC. The Chair of the FRCC Board of Directors will appoint a Chair and Vice-Chair of the BCC. Terms of BCC members will be equivalent to the time it takes to complete the hearing for which they were selected. Members may be re-appointed to subsequent terms without any limits to the number of terms they serve.

FRCC Industry Sectors are as follows:

- One (1) Member from the Investor Owned Utility Sector
- One (1) Member from the Suppliers Sector
- One (1) Member from the Non-Investor Owned Utility Wholesale Sector
- One(1) Member from the Load Serving Entity Sector
- One (1) Member from the Generating Load Serving Entity Sector

- One (1) Member from the General Sector

Each member of the BCC shall be a full voting member. There will be no alternates or proxies for the BCC members. Decisions of the BCC shall require (i) a quorum to be present requiring at least fifty (50) percent of the number of members assigned to the BCC provided, however, that in each case at least four (4) eligible Sectors are represented and (ii) a majority vote of the members of the BCC voting on the decision.

### **3.0 OTHER DECISION-MAKING BODIES**

The FRCC has engaged NERC to oversee the compliance monitoring and enforcement responsibility as related to FRCC's compliance with Reliability Standard requirements that are applicable to the functions for which FRCC is a Registered Entity.



**Florida Reliability Coordinating Council**  
**Compliance Monitoring and Enforcement Program**  
**Amended February 6, 2009**

# Compliance Monitoring and Enforcement Program

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

### ATTACHMENT 2 – HEARING PROCEDURES

## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Florida Reliability Coordinating Council (“FRCC”) to monitor, assess, and enforce compliance with Reliability Standards within the FRCC Region<sup>1</sup>. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1** Alleged Violation: A potential violation for which the FRCC has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the FRCC that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Business Days: Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule. New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve and Christmas Day.
- 1.1.5** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.6** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.7** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.

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<sup>1</sup> The FRCC Region is peninsular Florida east of the Apalachicola River



## Compliance Monitoring and Enforcement Program

- 1.1.8** Compliance Enforcement Authority: NERC or the FRCC in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.9** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.10** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by the FRCC or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.
- 1.1.11** Exception Reporting: Information provided to the FRCC by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.12** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including FRCC decision, Settlement Agreement, or otherwise.
- 1.1.13** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.14** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the FRCC in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.15** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the FRCC on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.16** FRCC Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of

## Compliance Monitoring and Enforcement Program

compliance within the FRCC's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.

- 1.1.17** FRCC Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the FRCC, (3) the methods to be used by the FRCC for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the FRCC's Annual Audit Plan.
- 1.1.18** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.19** Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.
- 1.1.20** Remedial Action Directive: An action (other than a penalty or sanction) required by the FRCC that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.21** Required Date: The date given a Registered Entity in a notice from the FRCC by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.22** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the FRCC and that are included for monitoring in the FRCC Implementation Plan.
- 1.1.23** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.

## **Compliance Monitoring and Enforcement Program**

**1.1.24 Spot Checking:** A process in which the FRCC requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

### **2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS**

The FRCC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. Each Registered Entity shall inform the FRCC within thirty (30) days of changes to its registration information. The FRCC shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The FRCC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The FRCC will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The FRCC will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

The FRCC shall develop, maintain, and provide to NERC a FRCC Compliance Registry with updates as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the

## Compliance Monitoring and Enforcement Program

specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard.

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The FRCC will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by the FRCC through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The FRCC Compliance Staff may provide the determination of an alleged violation to the FRCC Compliance Committee (CC) for a non-decisional technical review. This technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation.

The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the FRCC may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

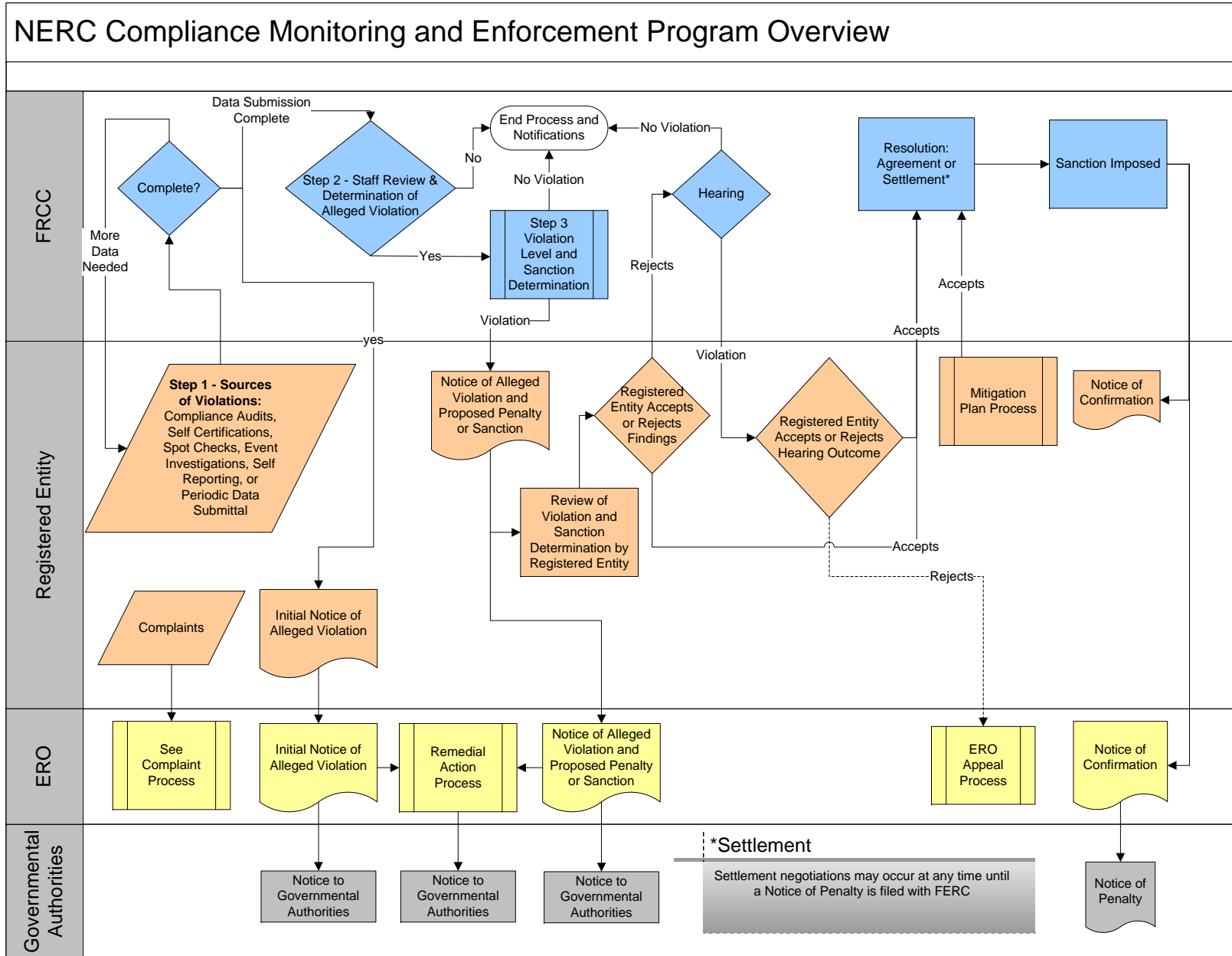
Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the FRCC. NERC or the FRCC may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall

## **Compliance Monitoring and Enforcement Program**

process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.

**Compliance Monitoring and Enforcement Program**  
**Figure 3.0 – Compliance Monitoring and Enforcement Program Overview**



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**.<sup>2</sup>

- The FRCC distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The FRCC provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, the FRCC informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the FRCC provides the audit schedules to FERC and based upon the agreements in place with FERC.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, the FRCC notifies the Registered Entity of the Compliance Audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the FRCC will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to the FRCC the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the Compliance Audit. The audit team follows NERC audit guidelines in the implementation of the Compliance Audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an audit report, including an assessment of compliance with the Reliability Standards, to the FRCC.

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<sup>2</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

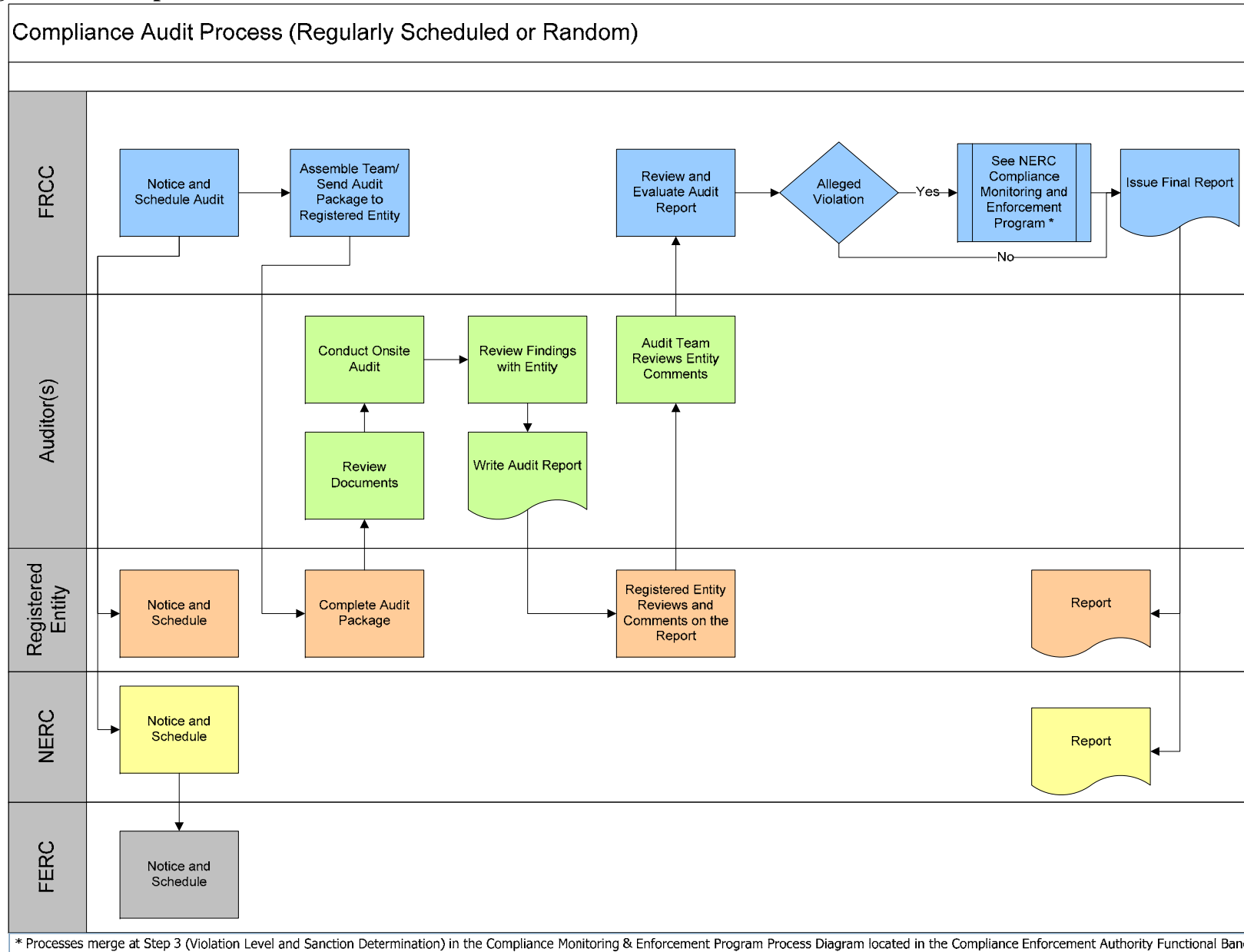
## Compliance Monitoring and Enforcement Program

- The FRCC reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- The FRCC provides the final audit report to the Registered Entity and to NERC.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.



# Compliance Monitoring and Enforcement Program

## Figure 3.1 – Compliance Audit Process



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 FRCC Annual Audit Plan and Schedule**

The FRCC shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the FRCC provides the Annual Audit Plans to FERC consistent with the agreements in place with FERC.

Prior to January 1 of the year covered by the Annual Audit Plan, the FRCC shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The FRCC will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

Revisions and additions to a FRCC Annual Audit Plan shall be approved by NERC and the Registered Entity shall be notified in a timely manner (normally sixty (60) days in advance) of changes or revisions to scheduled audit dates.

### **3.1.3 Frequency of Compliance Audits**

The FRCC will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the FRCC if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the FRCC or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated, the FRCC shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### **3.1.4 Scope of Compliance Audits**

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### **3.1.5 Conduct of Compliance Audits**

The audit team shall be comprised of staff personnel from the FRCC and may include contractors and industry volunteers as determined by the FRCC to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from the FRCC and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any FRCC Compliance Audit team either as an observer or as an audit team member as determined by the FRCC. Additionally, FERC and

## **Compliance Monitoring and Enforcement Program**

other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the FRCC is applicable.
- Successfully complete all NERC or NERC-approved FRCC auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the FRCC no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the FRCC within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the FRCC at least five (5) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit. The FRCC will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

### **3.1.6 Compliance Audit Reports**

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the FRCC who will review the report and assess compliance with

## Compliance Monitoring and Enforcement Program

the Reliability Standards and provide the Registered Entity with a copy of the final report. The FRCC will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the FRCC in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or the FRCC until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the FRCC pursuant to the provisions of Section 5.0.

Information deemed by the FRCC or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### 3.2 Self-Certification

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

#### 3.2.1 Self-Certification Process Steps

The process steps for the Self- Certification process are as follows and as shown in **Figure 3.2.1**.<sup>3</sup>

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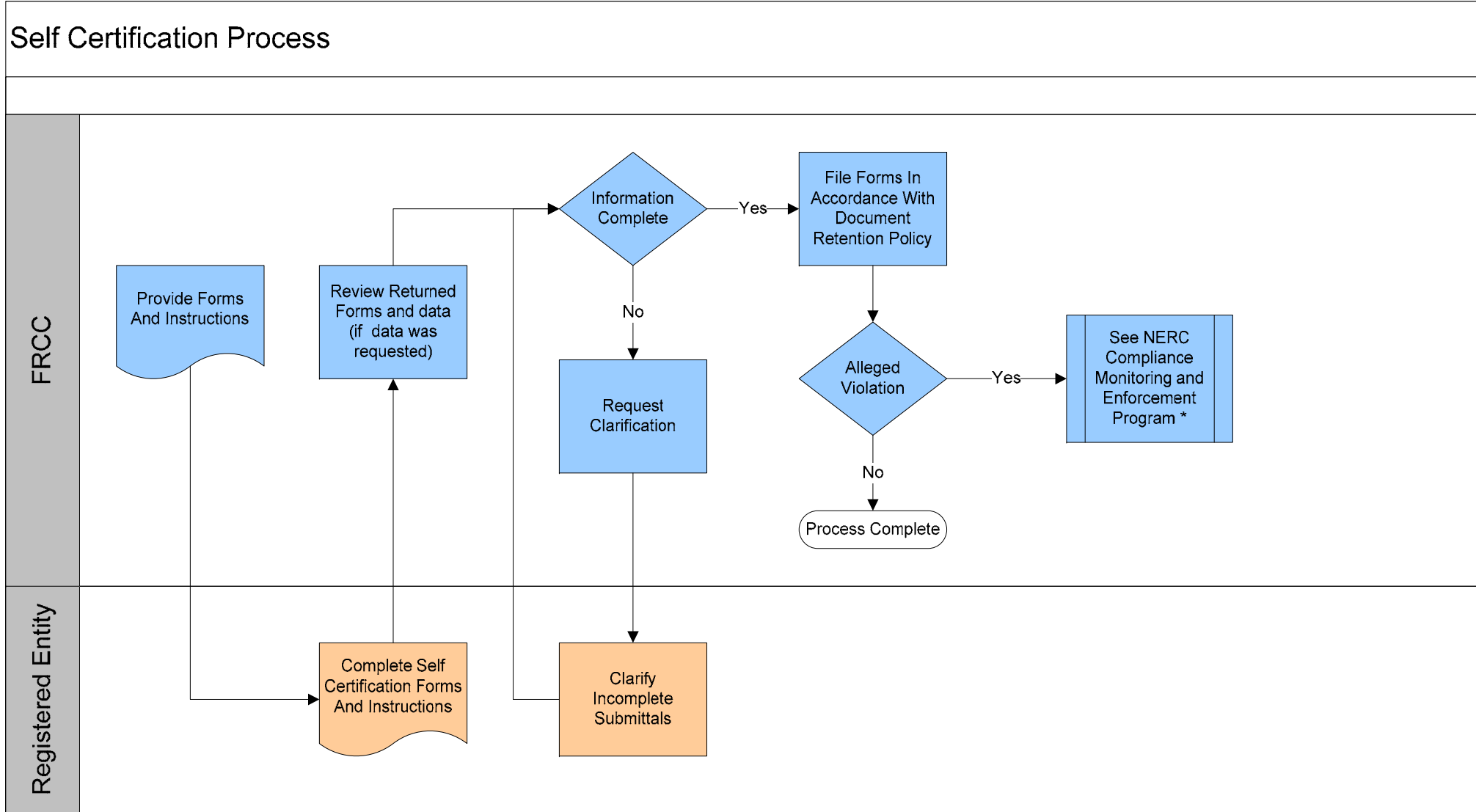
<sup>3</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the FRCC's receipt of data.

## Compliance Monitoring and Enforcement Program

- The FRCC posts and updates the reporting schedule and informs Registered Entities. The FRCC ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The FRCC requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the FRCC.
- The FRCC reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The FRCC completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Function

## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by the FRCC. Spot Checking may be initiated by the FRCC at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The FRCC then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by the FRCC as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1:**<sup>4</sup>

- The FRCC notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the FRCC will allow at least twenty (20) days for the information to be submitted or available for review.
- The FRCC, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by the FRCC is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the FRCC in the format specified in the request.
- The FRCC reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- The FRCC reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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<sup>4</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the FRCC's receipt of data.

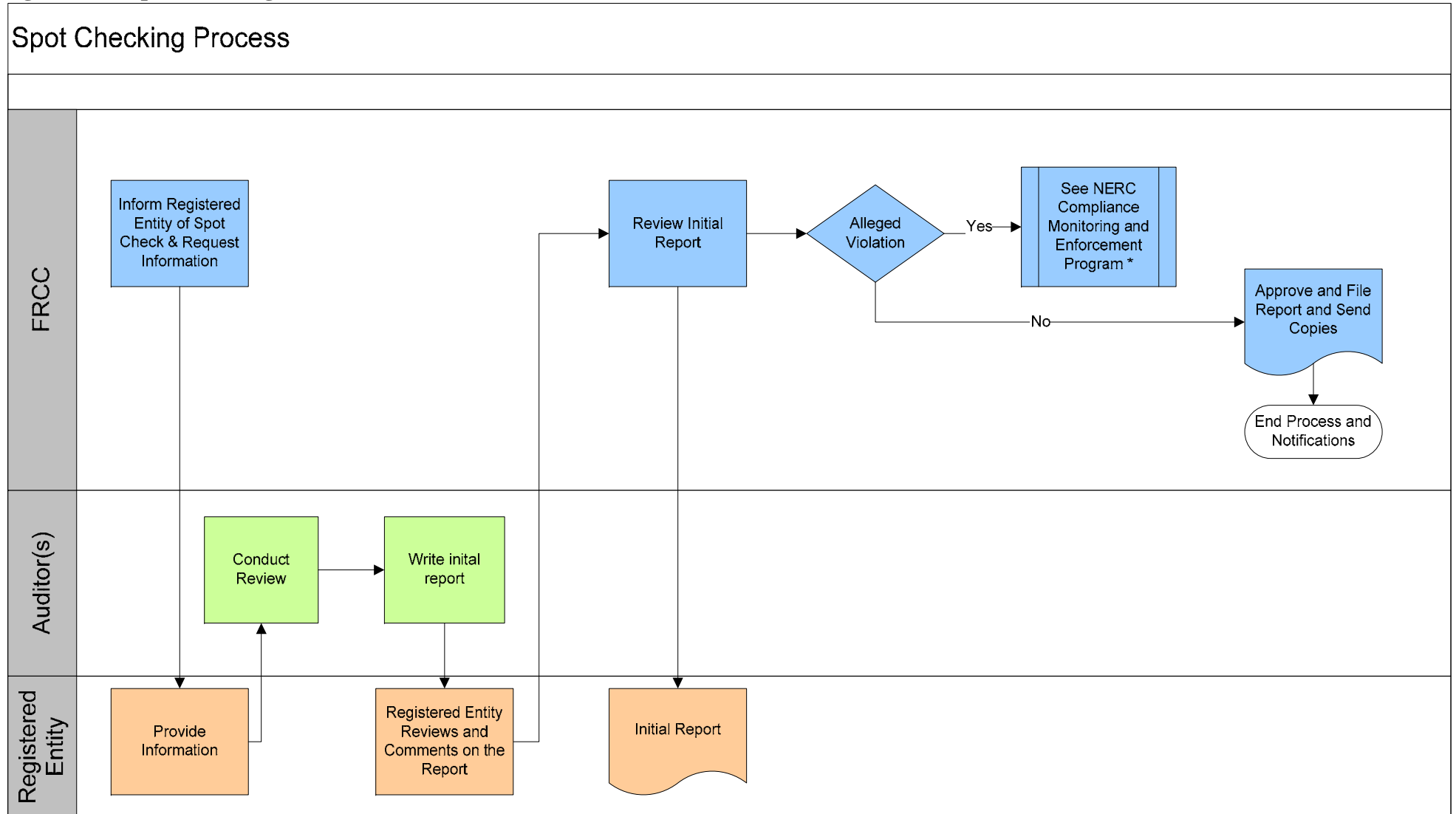
## Compliance Monitoring and Enforcement Program

- The FRCC completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.



# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## **Compliance Monitoring and Enforcement Program**

### **3.4 Compliance Violation Investigations**

A Compliance Violation Investigation may be initiated at any time by the FRCC or NERC in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by the FRCC's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>5</sup> The FRCC shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation of a U.S.-related matter, NERC shall provide notice to FERC of the investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an investigation of a non-U.S.-related matter, NERC shall provide notice of the investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

#### **3.4.1 Compliance Violation Investigation Process Steps**

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<sup>5</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Violation Investigations into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the FRCC or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the FRCC determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1:**<sup>6</sup>

- The FRCC is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the FRCC: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While the FRCC may, at its discretion, notify the Registered Entity of the reasons for its Compliance Violation Investigation, the Compliance Violation Investigation, as it unfolds, need not be limited to this scope.
- NERC assigns a NERC staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations place by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- The FRCC requests data or documentation and provides a list of individuals on the Compliance Violation Investigation team and their recent employment history. The Registered Entity may object to any individual on the Compliance Violation Investigation team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff on the Compliance Violation Investigation team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to a Compliance Violation Investigation may object to any member of the Compliance Violation Investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the FRCC within such ten (10) business day period. The FRCC

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<sup>6</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

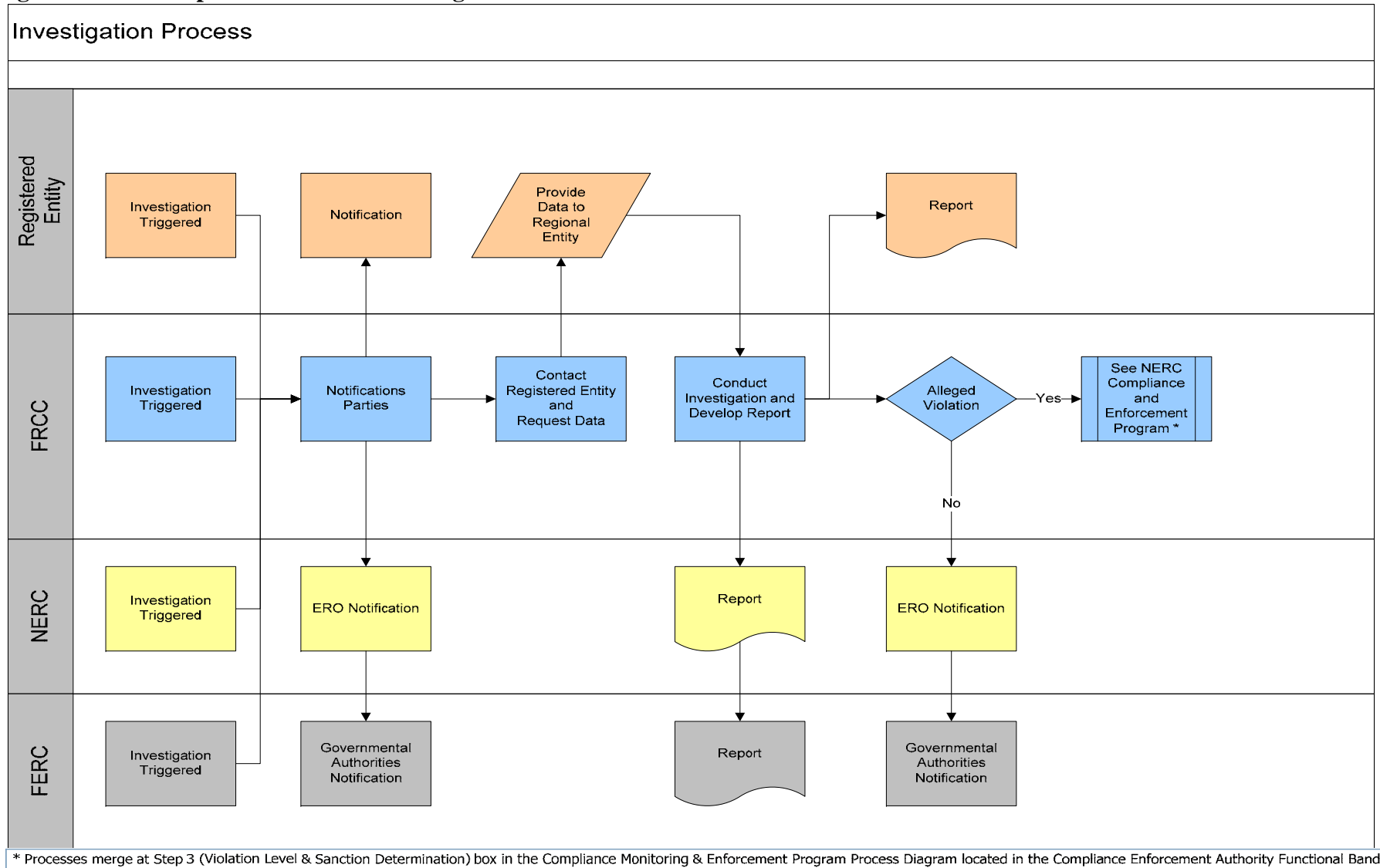
## Compliance Monitoring and Enforcement Program

will make a final determination as to whether the individual will participate in the Compliance Violation Investigation of the Registered Entity.

- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the FRCC in the format as specified in the request.
- The FRCC reviews information to determine compliance with the Reliability Standards. The FRCC may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The FRCC may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the FRCC's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The FRCC completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.
- If the FRCC determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Violation Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Violation Investigation pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitation placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction..

# Compliance Monitoring and Enforcement Program

**Figure 3.4.1 – Compliance Violation Investigation Process**



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>7</sup>

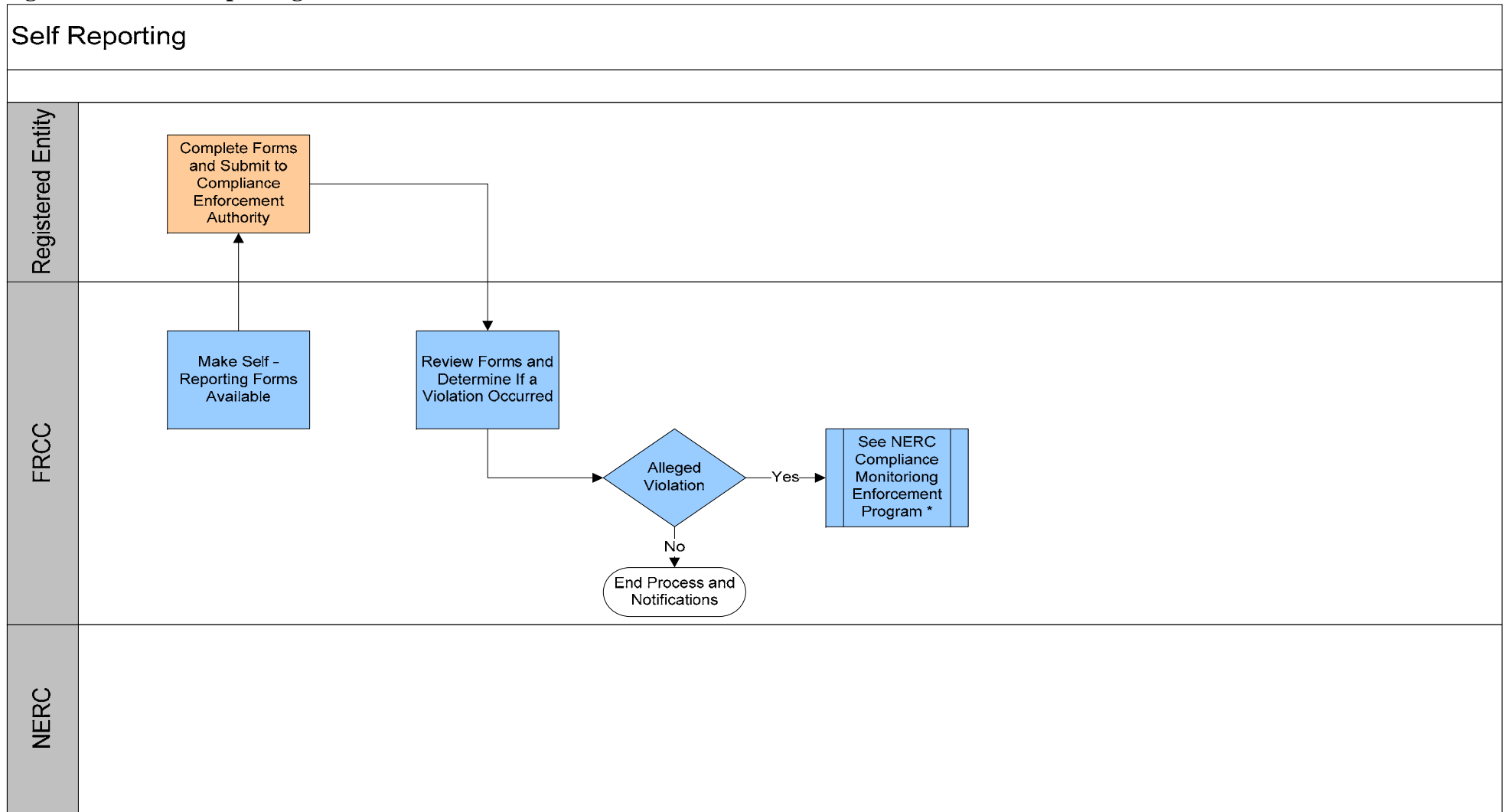
- The FRCC posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the FRCC.
- The FRCC reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The FRCC completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>This process normally completes within sixty (60) days following the FRCC's receipt of data.  
Revised for February 17, 2009 Compliance Filing

# Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

The FRCC requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the FRCC, or on an as-needed basis. Requests for data submittals will be issued by the FRCC to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>8</sup>

- The FRCC posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The FRCC ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its web site.
- The FRCC makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the FRCC in the format as specified in the request.
- The FRCC reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- The FRCC reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- The FRCC completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.

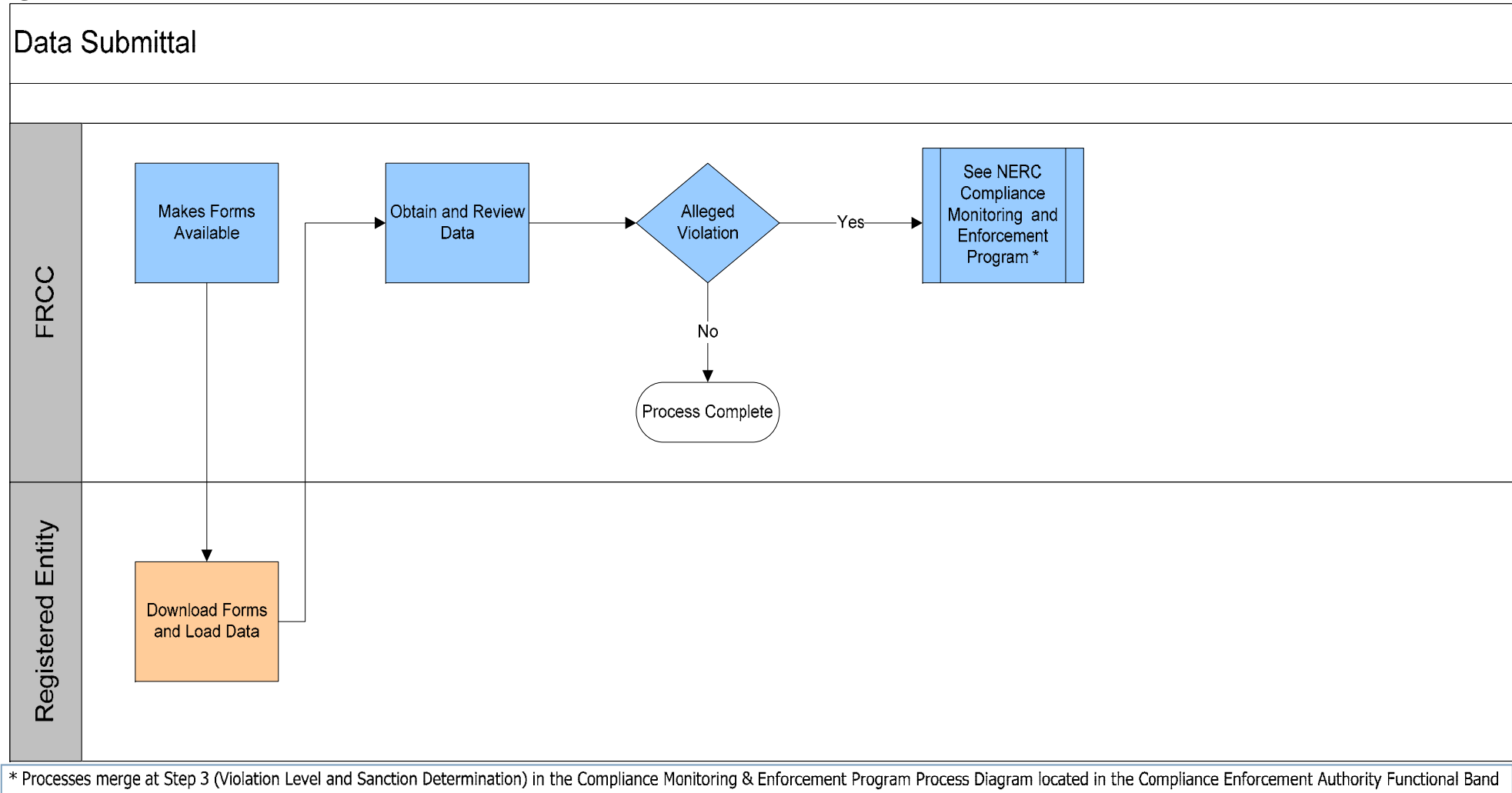
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<sup>8</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the FRCC's receipt of data.



# Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The FRCC shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The FRCC shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or the FRCC may receive Complaints alleging violations of a Reliability Standard. The FRCC will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to the FRCC or its affiliates, divisions, committees or subordinate structures, (2) where the FRCC determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the FRCC, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The FRCC will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the FRCC determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>9</sup>

- The complainant notifies NERC or the FRCC using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and the FRCC web sites. The Complaint should include sufficient information to enable NERC or the FRCC to make an assessment of whether the initiation of a Compliance Violation Investigation is

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<sup>9</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

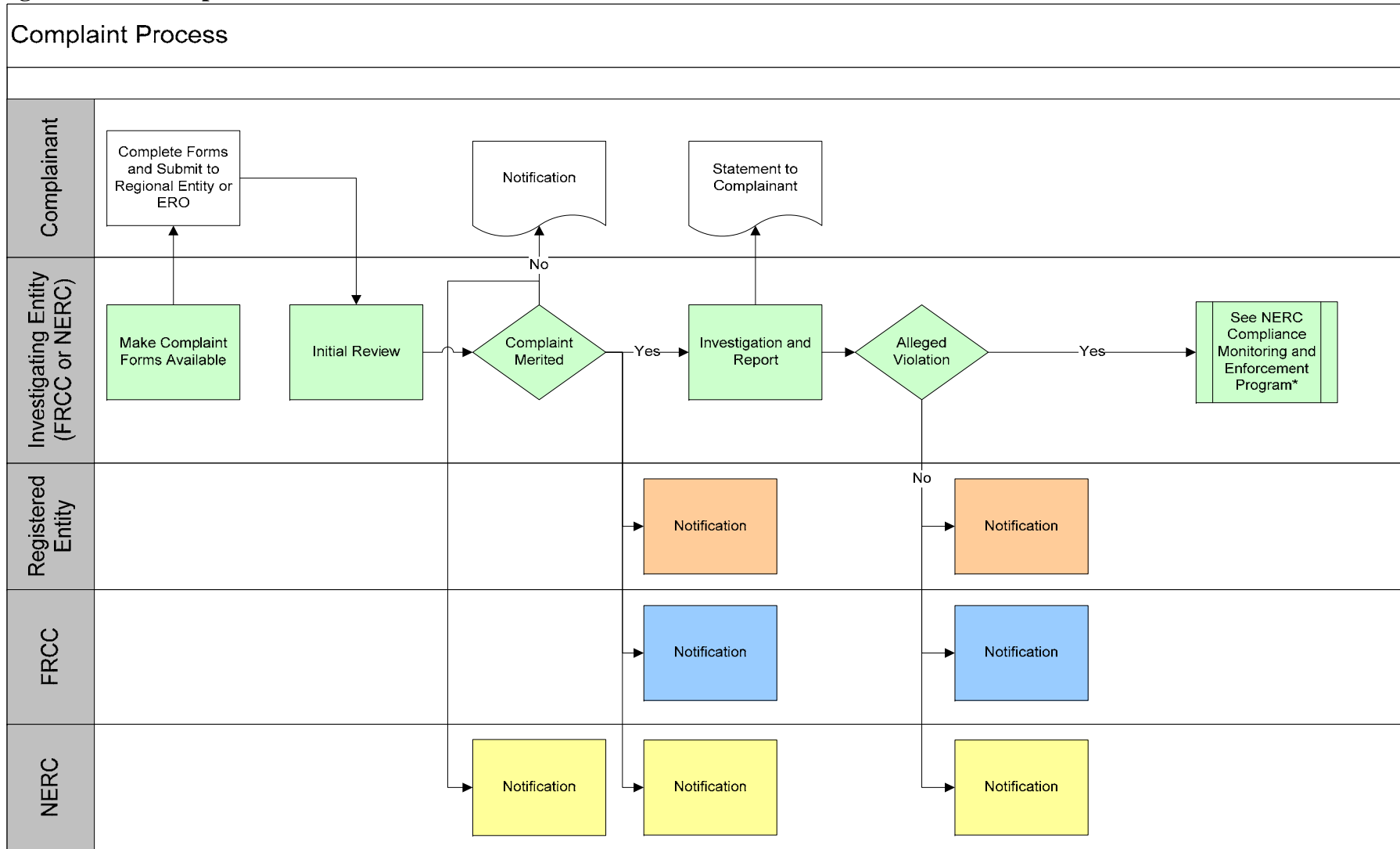
## **Compliance Monitoring and Enforcement Program**

warranted. NERC or the FRCC may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the FRCC determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The FRCC notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the FRCC determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The FRCC fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## **Compliance Monitoring and Enforcement Program**

### **3.8.2 Anonymous Complainant Notification Procedure**

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>10</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by the FRCC will either be directed to NERC or the FRCC will collect and forward the information to NERC, at the FRCC's discretion. Neither NERC nor the FRCC shall disclose the identity of any person or entity reporting possible violations to NERC or to a FRCC that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where the FRCC collects the information, by NERC and the FRCC. If the FRCC determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## **4.0 ANNUAL IMPLEMENTATION PLANS**

### **4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan**

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the FRCC by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the FRCC to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### **4.2 FRCC Implementation Plan**

By November 1 of each year, the FRCC will submit a FRCC Implementation Plan for the following calendar year to NERC for approval. The FRCC Implementation Plan and the FRCC's other relevant Compliance Program documents shall be posted on the FRCC's Web site.

## **5.0 ENFORCEMENT ACTIONS**

The FRCC shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the FRCC's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and the FRCC shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the FRCC.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process

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<sup>10</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

If the FRCC alleges that a Registered Entity has violated a Reliability Standard, the FRCC shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The FRCC may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the FRCC believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the FRCC to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the FRCC will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;
- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the shortened procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedure**, and

## Compliance Monitoring and Enforcement Program

(viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from the FRCC, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the notice of the penalty or sanction or other enforcement action will then be processed and issued to the Registered Entity.

### 5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the FRCC's determination of violation and sanction (if applicable), in which case the FRCC shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the FRCC a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The FRCC shall schedule a conference with a FRCC Board Compliance Committee (BCC) appointed Compliance Advisory Panel (CAP) and the Registered Entity within ten (10) business days after receipt of the response. No person who is employed by, or has a financial or other interest in the registered entity contesting the alleged violation, or any of its affiliates, may participate as a member of the CAP. The CAP will include at least one member of the FRCC Compliance Staff and all CAP discussions will be conducted confidentially. If the FRCC and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made within ten (10) business days, the violation will become a Confirmed Violation when filed by NERC with FERC.

If a hearing is requested the FRCC shall initiate the hearing process by convening the FRCC BCC and issuing a written notice of hearing to the Registered Entity and the FRCC BCC and identifying the FRCC's designated hearing representative.<sup>11</sup>

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<sup>11</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the FRCC, the Registered Entity may file a request for hearing with the FRCC.

## **Compliance Monitoring and Enforcement Program**

### **5.3 Hearing Procedure for Compliance Hearings**

The FRCC hearing procedure is set forth in **Attachment 2**.

### **5.4 Settlement Process**

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the FRCC shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

The FRCC will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The FRCC 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 the FRCC and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the FRCC will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement. The FRCC will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.



## Compliance Monitoring and Enforcement Program

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:<sup>12</sup>

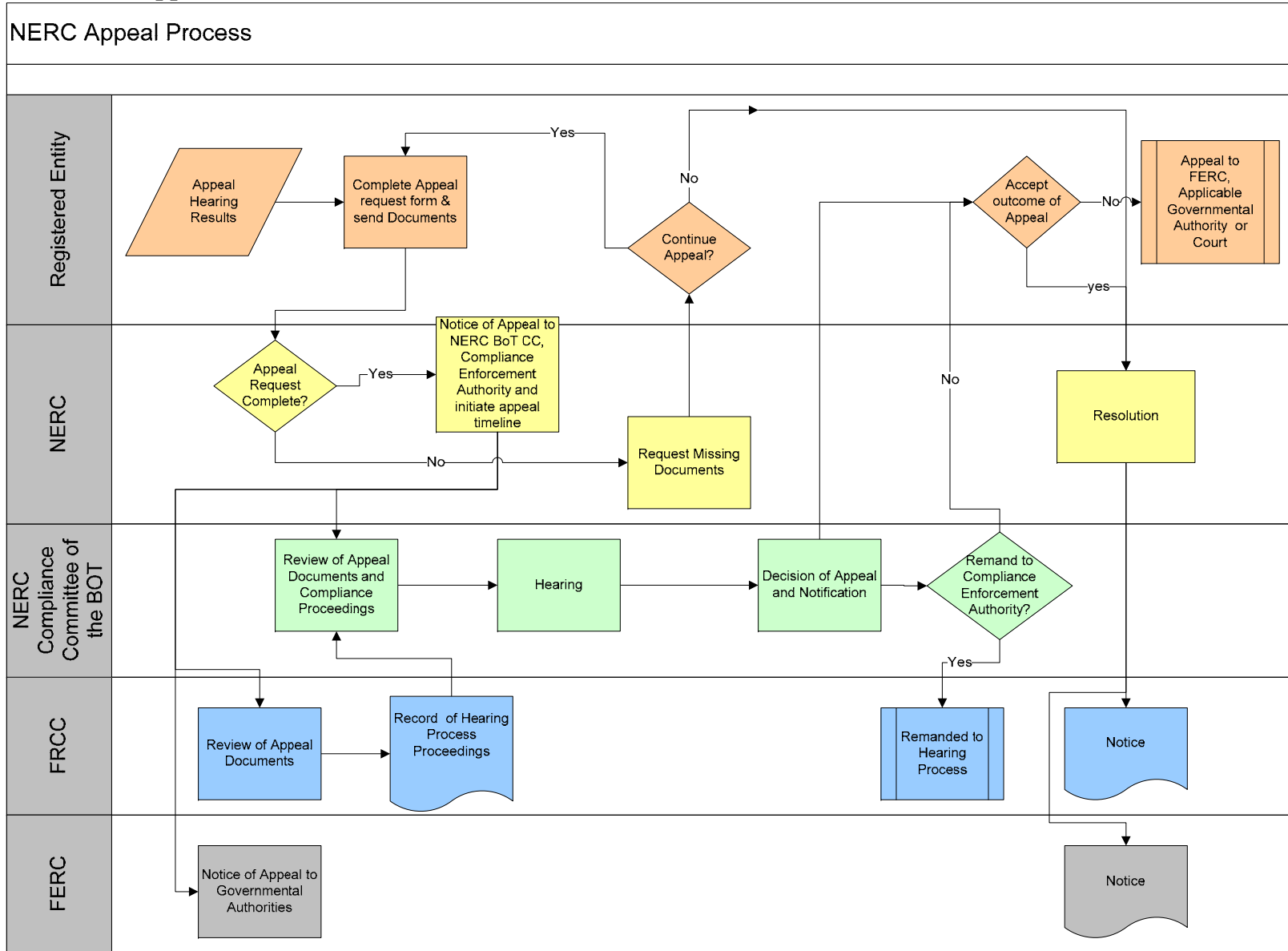
On appeal, NERC shall either affirm the FRCC decision or remand to the FRCC with reasons for its remand, which may include a direction to the FRCC to revise the decision. If NERC directs the FRCC to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of the FRCC whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

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<sup>12</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty**

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the FRCC to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the FRCC, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

Any penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

## **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

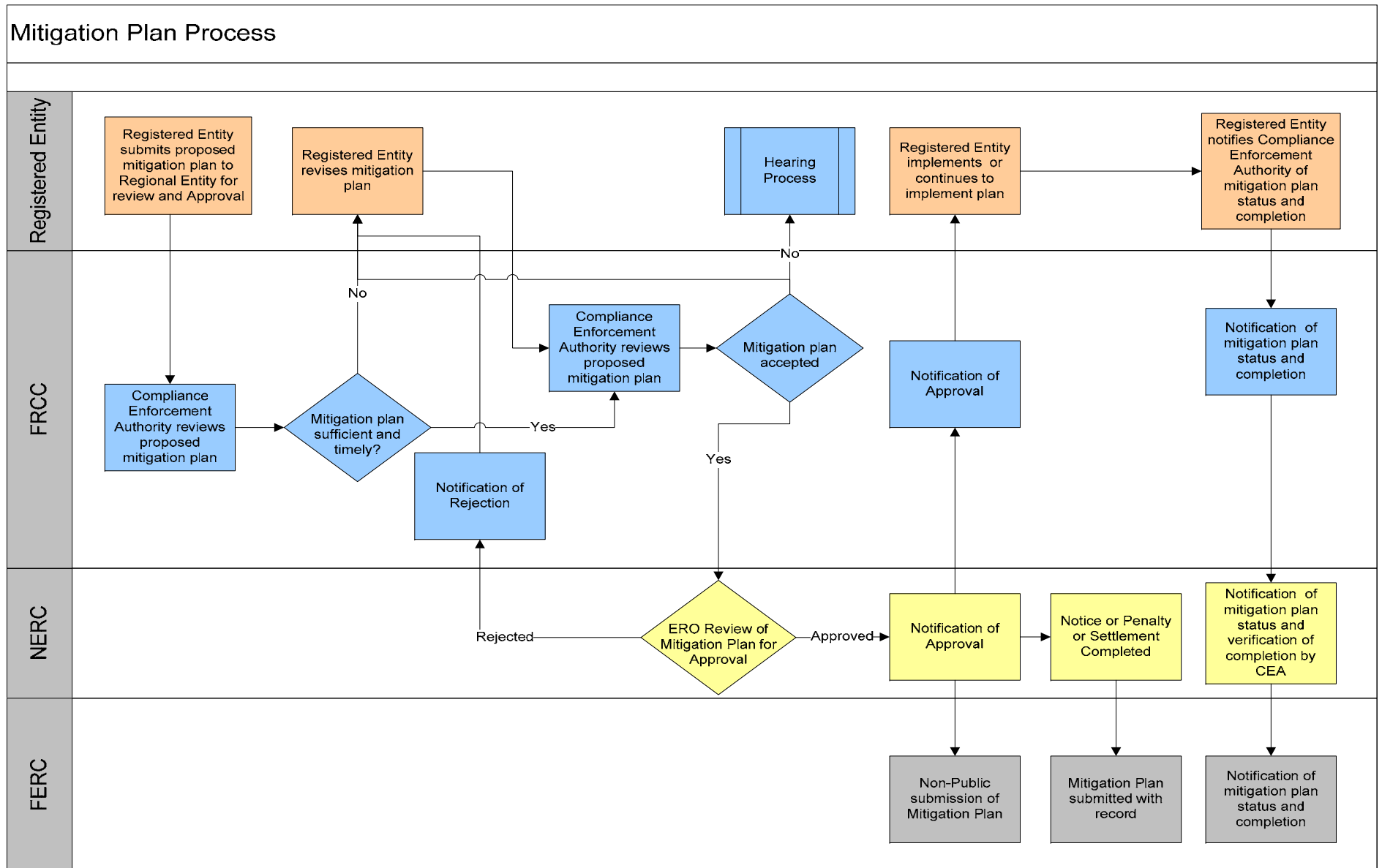
### **6.1 Requirement for Submission of Mitigation Plans**

A Registered Entity found to be in violation of a Reliability Standard shall file with the FRCC (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.

# Compliance Monitoring and Enforcement Program

## Figure 6.1 – Mitigation Plan Process



## **Compliance Monitoring and Enforcement Program**

### **6.2 Contents of Mitigation Plans**

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### **6.3 Timetable for Completion of Mitigation Plans**

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The FRCC will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the FRCC's discretion, the completion deadline may be extended for good cause including: (i) short assessment periods (i.e., event driven or monthly assessments), and (ii)

## **Compliance Monitoring and Enforcement Program**

construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the FRCC with associated sanctions or penalties. The FRCC will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the FRCC will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. The FRCC will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the FRCC at least five (5) business days before the original milestone or completion date. The FRCC may accept a request for an extension or modification of a Mitigation Plan if the FRCC determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the FRCC or the FRCC BCC in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### **6.4 Submission of Mitigation Plans**

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the FRCC BCC's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the FRCC or the FRCC BCC in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the FRCC before the FRCC BCC renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

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### **6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans**

Unless extended by the FRCC, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the FRCC shall, within the initial or extended review period, notify the Registered Entity that the review period is being extended and identify the date by which the FRCC will complete its review of the Mitigation Plan. The FRCC's extension notice shall also state that if the FRCC has not issued a notice by the end of the extended review period either stating that the FRCC accepts or rejects the proposed Mitigation Plan or further extending the FRCC's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the FRCC rejects a Mitigation Plan, the FRCC will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The FRCC will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the FRCC will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedure, by submitting to the FRCC a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the FRCC will issue a written statement accepting a Mitigation Plan it deems as appropriate.

The FRCC will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the FRCC, will notify the FRCC and the Registered Entity as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the FRCC, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part of the public posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard in accordance with Section 5.4.

## **Compliance Monitoring and Enforcement Program**

### **6.6 Completion/Confirmation of Implementation of Mitigation Plans**

The Registered Entity shall provide updates at least quarterly to the FRCC on the progress of the Mitigation Plan. The FRCC will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the FRCC certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the FRCC to verify completion. The FRCC shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the FRCC. In addition, the FRCC may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

The FRCC will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### **6.7 Recordkeeping**

The FRCC will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.



## Compliance Monitoring and Enforcement Program

### 7.0 REMEDIAL ACTION DIRECTIVES

The FRCC may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The FRCC will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the FRCC shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. The FRCC will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. The FRCC will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The FRCC will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once the FRCC has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the FRCC within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the

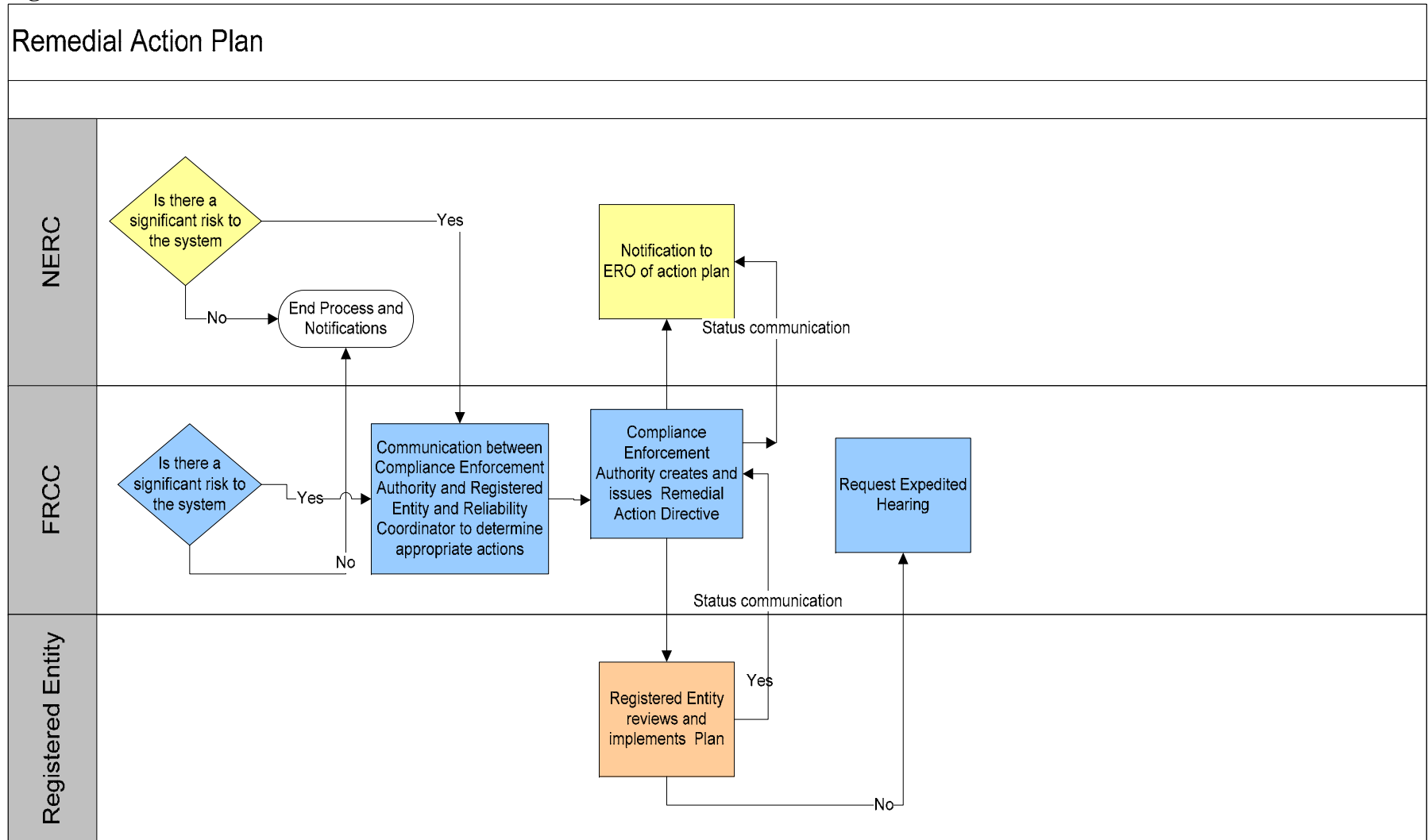
## **Compliance Monitoring and Enforcement Program**

hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.

# Compliance Monitoring and Enforcement Program

**Figure 7.0 – Remedial Action Process**



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### **8.0 REPORTING AND DISCLOSURE**

The FRCC shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

The FRCC shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the FRCC through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the FRCC shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority, within two (2) business days of receiving such a report from the FRCC; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a FRCC staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

The FRCC shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. The FRCC will ensure the information is current when these reports are provided.

The FRCC shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, the FRCC will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The

## **Compliance Monitoring and Enforcement Program**

Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the FRCC to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

The FRCC records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

The FRCC records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

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Upon request from NERC, the FRCC will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the Compliance Program. In providing the information and data to NERC, the FRCC shall preserve any mark of confidentiality.

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

The FRCC personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

The FRCC will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

#### PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the FRCC may sequentially execute the following steps for each Reliability Standard for which the FRCC has requested data, information, or other reports. The FRCC however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

**Step 1:** The FRCC will issue a follow-up notification to the Registered Entity's designated contact.

**Step 2:** The FRCC will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).

**Step 3:** The FRCC will issue a follow-up notification to the Registered Entity's chief executive officer or equivalent (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).

A full Compliance Audit may be scheduled at this step.

**Step 4:** Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.

Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.

# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

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# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

The provisions set forth in this Attachment 2 (“Hearing Procedures”) shall apply to and govern practice and procedure before the FRCC in hearings in the United States conducted into (i) whether Registered Entities within the FRCC’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before the FRCC Board Compliance Committee (BCC)<sup>1</sup> established by the FRCC. The composition of the BCC, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the BCC on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.

#### 1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the BCC, for good cause shown, either upon the Hearing Officer’s or the BCC’s own motion or upon the motion of any Participant.

#### 1.1.3 Standards for Discretion

The FRCC’s discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in FRCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present

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<sup>1</sup> See Exhibit D of the Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council for a description of the FRCC BCC.

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explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.

- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the FRCC's conflict of interest policy.
- e) Impartiality - Persons appearing before the BCC should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### 1.1.4 Interpretation

These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.

Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.

To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

### 1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC and FRCC Compliance Monitoring and Enforcement Programs shall apply, and (ii) the following terms shall have the following meanings:

“Bulk-Power System,” for the purposes of these Hearing Procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk,” as designated by the FRCC.

“FRCC's area of responsibility” means the FRCC's corporate region. The FRCC's area of responsibility is shown in Exhibit A to the delegation agreement between the FRCC and NERC.

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“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

“Manager of Compliance” means the Manager of Compliance of the FRCC, who is responsible for the management and supervision of Compliance Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means an individual employed or contracted by the FRCC and designated by the FRCC to preside over hearings conducted pursuant to these Hearing Procedures.

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *ERO Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s violation and take into consideration any timely efforts made by the Registered Entity to remedy the violation.

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“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by the FRCC who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies the FRCC’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the BCC.

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

#### **1.2.1 Contents of Filings**

All filings made with BCC must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other documents; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

#### **1.2.2 Form of Filings**

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on

## **Compliance Monitoring and Enforcement Program**

one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.

- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

#### **Where to File**

Filings shall be made with the Clerk of the FRCC located at its principal office. The office will be open from 8:00 am – 5:00 pm local time each day except Saturday, Sunday, legal holidays and any other day declared by the FRCC.

#### **When to File**

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the BCC. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than 5:00 pm local time on the date specified.

#### **How to File**

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system by the FRCC.

#### **Number of Copies to File**

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the BCC with a copy of each filing.

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### **Signature**

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

### **Verification**

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the BCC. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.

### **Certificate of Service**

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

#### **1.2.4 Service**

##### **Service List**

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Manager of Compliance and the Registered Entity's designated agent for service [as registered with the FRCC] shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

##### **By Participants**

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

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### **By the Clerk**

The Clerk shall serve all issuances of the Hearing Officer and BCC upon the members of the BCC and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Clerk shall transmit a copy of the record of a proceeding to NERC at the time it serves the NERC with either (1) a notice of penalty, or (2) a BCC final order that includes a notice of penalty.

### **Effective Date of Service**

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service of a document upon the Participant, four (4) business days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

**1.2.5** (Section left intentionally blank)

### **1.2.6 Extensions of Time**

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or BCC for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or BCC may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

### **1.2.7 Amendments**

Amendments to any documents filed in a proceeding may be allowed by the Hearing Officer or the BCC upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

### **1.2.8 Transcripts**

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



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what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

The FRCC will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

### **1.2.9 Rulings, Notices, Orders and Other Issuances**

Any action taken by the Hearing Officer or the BCC shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the BCC. All notices of hearings shall set forth the date, time and place of hearing.

### **1.2.10 Location of Hearings and Conferences**

All hearings and oral arguments shall be held at the principal office of the FRCC unless the Hearing Officer or BCC designates a different location.

### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the BCC, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

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

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

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

No hearing, oral argument or meeting of the BCC shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or BCC, or any transcript, made in any proceeding shall be publicly released unless NERC (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the BCC, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation. Unless NERC provides a different

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docketing system that will be used uniformly by the FRCC, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[FRCC]”, followed by a dash (“-“), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the FRCC, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, BCC members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

## **1.3 Initiation of the Hearing Process**

### **1.3.1 Registered Entity’s Option to Request a Hearing**

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these Hearing Procedures, a Registered Entity may file a statement with the FRCC requesting a hearing if either:

- a) The Registered Entity files a response to a notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or
- b) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan.

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity’s proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened

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hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent) requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) business days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- a) The Registered Entity's Self-Reporting of a violation;
- b) The notice of Alleged Violation and the Registered Entity's response thereto; and/or
- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

### **1.3.2 Shortened Hearing Procedure**

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

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

- a) The Prehearing Conference shall be held within seven (7) business days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) business days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.

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- c) Within twenty-one (21) days after the prehearing conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) business days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:
  - 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) business days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) business days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Paragraph 1.7.5 and within seven (7) business days thereafter, a reply brief designated "Brief in Reply to Exceptions."
- h) The BCC shall strive, but is not required, to issue a final order within ninety (90) days of the notice of hearing.

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

### **1.4 General Hearing Procedure**

#### **1.4.1 Notice of Hearing**

Within seven (7) business days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) business days after the notice of hearing is issued.

#### **1.4.2 Hearing Officer**

The FRCC may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the BCC as set forth in Paragraph 1.4.3. Members of the BCC may attend any aspect of the hearing.

The BCC may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for submission of the matter to the BCC for final decision through the presentation to the BCC of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- 3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise and issue orders concerning discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;

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- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;
- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue protective orders pursuant to Paragraph 1.5.9;
- 11) To issue initial opinions; and
- 12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 FRCC Board Compliance Committee**

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

- 1) The BCC shall receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written comments, testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.
- 2) The BCC or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The BCC shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the BCC shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- 4) To the extent that the BCC disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review

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meeting the requirements of Paragraph 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.

- 5) The BCC shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the BCC shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

### **1.4.4 Interlocutory Review**

A Participant shall be allowed to seek interlocutory review by the BCC of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the BCC, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) business days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) business days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the BCC within fourteen (14) business days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the BCC.

On review of a Hearing Officer's ruling, the BCC may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The BCC may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the BCC, and (ii) majority vote of the members of the BCC voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the BCC'S action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the BCC based on a finding of exceptional circumstances.

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A non-Participant that has been ordered by the Hearing Officer pursuant to paragraph 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the BCC of the Hearing Officer's order with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to paragraph 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide document, information or testimony.

### **1.4.5 Disqualification**

A Hearing Officer, Technical Advisor or member of the BCC shall recuse himself or herself from a proceeding if participation would violate the FRCC's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the BCC from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

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

### **1.4.6 Technical Advisor**

The Hearing Officer and/or the BCC may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not be a



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member of Staff participating in the proceeding on which such technical advice would be rendered.

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

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

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the BCC, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
  - 2) the BCC, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;
    - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the BCC, the Hearing Officer and any Technical Advisor.
- d) Any member of the BCC, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) business days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

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### **1.4.8 Appearances**

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

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

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

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

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

### **1.4.10 Consolidation of Proceedings**

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

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

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### **1.5 Prehearing Procedure**

**1.5.1** [Intentionally left blank]

#### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

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

#### **1.5.3 Summary Disposition**

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

#### **1.5.4 Status Hearings**

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

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### **1.5.5 Motions**

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) business days after service of the motion, and replies to responses shall be filed within seven (7) business days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

### **1.5.6 Experts**

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

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

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

(1) Within five (5) business days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:

(A) requests for information to the Respondent;

(B) every written request, including e-mail, directed to persons not employed by the FRCC to provide information or documents or to be interviewed;

(C) the documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;

(E) all other documents obtained from the Respondent; and

(F) all other documents obtained from persons not employed by the FRCC.

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The sole bases pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7(b); provided however, that the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or BCC shall oversee the Staff's designation of documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary.

(3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent not later than fourteen (14) business days after Staff receives such documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional documents available to the Respondent not less than ten (10) business days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

(4) Nothing in subparagraph (a)(1) shall limit the discretion of the FRCC to make any other document available to the Respondent or the authority of the Hearing Officer to order the production of any other documents or information by any Participant.

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

(1) Staff may withhold a document from inspection and copying by the Respondent if:

(A) the document is privileged to Staff or constitutes attorney work product of Staff's counsel (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);

(B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of the FRCC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal

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enforcement action under consideration by, or initiated by, the FRCC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

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

(2) Nothing in Subparagraph (b)(1)(B), (C) or (D) authorizes Staff to withhold a document, or a part thereof, that contains exculpatory evidence. Nothing in Subparagraph (b)(1)\_ requires Staff to withhold a document from disclosure.

### **(c) Withheld Document List**

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). Upon review, the Hearing Officer may order Staff to make any document withheld available to the Respondent(s) for inspection and copying.

### **(d) Timing of Inspection and Copying**

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

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

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

### **(f) Copying Costs**

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

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### (g) Failure to Make Documents Available — Harmless Error

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

### 1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing. Unless otherwise directed by the Hearing Officer or BCC upon motion by a Participant or by the Hearing Officer, or by the BCC on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (a) The provisions of Subparagraphs (d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the BCC have the authority to issue orders to compel the appearance by or production of documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the BCC do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony.
- (d) References to “subpoena” in Rules 404, 409, 410 and 501(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony.
- (e) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b),

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the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the BCC, (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or BCC.

- (f) Unless otherwise ordered by the Hearing Officer or BCC, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, request for admissions, or order to produce or provide documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- (g) A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying.
- (h) In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the BCC shall determine whether the failure to make the document available was harmless error.
- (i) Unless otherwise ordered by the Hearing Officer or BCC, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- (j) Notwithstanding (f) and (i), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

The Hearing Officer’s ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.



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### **1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence**

Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Paragraph 1.6.16, and (ii) the testimony and documents of a non-Participant provided pursuant to an order to produce or provide documents, information or testimony, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce documents), the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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

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

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

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### 1.5.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as NERC (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any FRCC, NERC or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).
- c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
- e) The protective order shall identify the data, documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.

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- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

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

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

## **1.6 Evidentiary Hearing Procedure**

### **1.6.1 Evidentiary Hearings**

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

### **1.6.2 Order of Receiving Evidence**

In all proceedings Compliance Staff shall open and close.

### **1.6.3 Opening and Closing Statements**

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the BCC. Any Participant's request for such statements, or a Hearing Officer or BCC notice requiring such statements, shall be made at least ten (10) business days in advance of the start of the evidentiary hearing.

### **1.6.4 Right of Participant to Present Evidence**

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

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### **1.6.5 Exhibits**

All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### **1.6.6 Witness Attendance at Evidentiary Hearing**

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the BCC have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the BCC, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

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Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the FRCC's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

### **1.6.8 Evidence that is Part of a Book, Paper or Document**

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.6.9 Stipulations**

The Participants may stipulate to any relevant fact or the authenticity of any relevant document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### **1.6.10 Official Notice**

Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the FRCC.
- 3) State, provincial and federal statutes and municipal and local ordinances.
- 4) The decisions of state, provincial and federal courts.

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- 5) Generally recognized scientific or technical facts within the specialized knowledge of the FRCC.
- 6) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.6.11 Admissibility of Evidence**

Any evidence offered, including that included in a book, paper or document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### **1.6.12 Offer of Proof**

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

### **1.6.13 Reservation of Evidentiary Ruling**

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

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### **1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the BCC may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the BCC seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the BCC. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the BCC. If a member of the BCC seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) business days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) business days in advance of the evidentiary hearing. Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

### **1.6.17 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.

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- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### **1.7.2 Other Pleadings**

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### **1.7.3 Draft Initial Opinions**

The Hearing Officer may permit or require Participants to file draft initial opinions that set forth the Participants' proposed findings of fact and conclusions.

### **1.7.4 Hearing Officer's Initial Opinion**

Except as otherwise ordered by the BCC, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the BCC's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the BCC require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 1.5.10.

### **1.7.5 Exceptions**

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) business days after the



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time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."

- b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### **1.7.6 Oral Argument**

The BCC may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified by the BCC. The BCC will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral

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argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the BCC's own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### **1.7.8 BCC Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the BCC shall issue its final order. Issuance of a final order shall require (i) a quorum of the BCC, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the BCC, and (ii) majority vote of the members of the BCC voting on the final order (which number of members voting shall not be less than a quorum). The BCC shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The BCC will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty". The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The BCC shall direct the Clerk to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights to NERC or to FERC, as applicable.

### **1.7.9 The Record**

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:

- 1) Notice of Alleged Violation and Registered Entity's response thereto;
- 2) Registered Entity's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;

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- 3) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 4) Registered Entity's request for a hearing;
- 5) Participant filings, motions, and responses;
- 6) Notices, rulings, orders and other issuances of the Hearing Officer and BCC;
- 7) Transcripts;
- 8) Evidence received;
- 9) Written comments submitted in lieu of written testimony;
- 10) Matters officially noticed;
- 11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 12) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 13) Post-hearing pleadings other than briefs;
- 14) The Hearing Officer's initial opinion;
- 15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 16) The BCC's final order, any notice of Penalty issued therewith, and the Clerk's notice transmitting the final order to the Participants;
- 17) All notices of ex parte communications; and
- 18) Any notifications of recusal and motions for disqualification of a member of the BCC or Hearing Officer or Technical Advisor and any responses or replies thereto.

### **1.7.10 Appeal**

A Final Order of the BCC may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit to NERC the record of any docket that is the subject of an appealed final order.

### **1.8 Settlement**

Settlements may be entered into at any time pursuant to Section 5.4 of the NERC Compliance Monitoring and Enforcement Program and the FRCC's settlement procedures.

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### **1.9 Remedial Action Directives**

#### **1.9.1 Initiation of Remedial Action Directive Hearing**

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. The FRCC will notify NERC within two (2) business days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the FRCC that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to the FRCC within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.

#### **1.9.2 Remedial Action Directive Hearing Procedure**

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Paragraphs 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the BCC will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing

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arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.

- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the BCC. Oral argument shall not be held.
- f) The BCC shall issue a summary written decision within ten (10) business days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the BCC shall issue a full written decision. The written decision shall state the conclusions of the BCC with respect to the Remedial Action Directive, and shall explain the reasons for the BCC's conclusions.

## Exhibit E — Funding

### 1. Scope of activities funded through the ERO funding mechanism

FRCC shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

### 2. Allocation of Costs

FRCC shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement. FRCC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate FRCC's dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

### 3. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities identified by FRCC covering the NERC and FRCC budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund FRCC's costs identified in Section 1 of this Exhibit E in four equal quarterly payments.

### 4. Application of Penalties

All penalty monies received by FRCC other than penalty monies received from an operational function or division or affiliated entity of FRCC shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement

for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of FRCC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### 5. Budget and Funding for FRCC's Non-Statutory Activities

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such other functions and activities being referred to herein as "statutory activities"), FRCC performs the following other functions and activities (such other functions and activities being referred to in this Section 5 as "non-statutory activities")

#### **Non-Statutory Activities**

The Member Services division of the FRCC provides, coordinates or administers a variety of services relating to the reliable planning and operation of the bulk power system in the FRCC Region. These services are carried out by the FRCC Planning Committee (PC) and the FRCC Operating Committee (OC), and its various subcommittees, task forces and working groups.

#### **Planning Committee (PC)**

The PC promotes the reliability of the bulk power system in the FRCC Region, and assesses and encourages generation and transmission adequacy. The PC, through the FRCC Regional Transmission Planning Process, provides a vehicle for ensuring that transmission planning within the FRCC will provide for the development of a robust transmission network within the FRCC Region. The activities of the PC include the activities of the following Member Services working groups: the Stability Working Group, the Transmission Working Group, the Resources Working Group, the ATG Working Group and the Fuel Reliability Working Group. The activities of these working groups pertain to the facilitated and coordinated effort for the running of engineering studies and communications in a cost effective, open and transparent manner for the members to complete common tasks to ensure future bulk power reliability. This includes any transmission planning that allows transmission owners to meet FERC's Order 890 requirement for wide area planning and implementation of data and reporting to the Florida Public Service Commission on resource adequacy and transmission reliability.

#### **Operating Committee (OC)**

The OC is responsible for the coordination, planning, operation and maintenance of reliable bulk power supply in the FRCC. Its primary reliability goals are the continuous improvement of the situational awareness of the operators interconnected within the FRCC, and ensuring that adequate physical, operational and cyber security objectives are in place for the Region's shared communications network. The OC ensures reliable operations are maintained through the development and implementation of the FRCC Security Process.

### **Operating Reliability Subcommittee (ORS)**

The ORS provides overall administration for the development and implementation of operating procedures and other reliability matters. The ORS reviews and assesses regional import and export limits, scheduled transmission outages, real-time system reliability, events analysis, information and data exchange and other reliability issues. The ORS provides formal oversight and implementation of the Security Process which establishes the reliability responsibilities of the various entities within the Region and specifically monitors the agents responsible for performing the (RC) and Operations Planning Coordinator (OPC) functions.

### **Data Exchange Working Group (DEWG)**

The DEWG, subordinate to the ORS, supports the real-time data needs of the FRCC Reliability Coordinator and other entities identified by the FRCC ORS, and for developing methodologies to facilitate the exchange of real-time, modeling, and other operational data to help assure reliable electric power system operations. Within the FRCC, all entities provide system data via the FRCC Reliability Data Link (RDL). The FRCC RDL receives all substation topology information, line flows, voltage levels, unit parameters, etc. from the operating entities on a real-time basis. Data is available to all.

### **FRCC Telecommunications Subcommittee (TS)**

The TS provides formal oversight over the TS budget which is included in the OC budget. The primary purpose of the TS is to ensure that adequate and redundant communications facilities are made available to the operating entities within the FRCC. The TS administers the FRCC hotline program, Satellite phone program, RDL program and also ensures that reliable and redundant communications are maintained with NERCNet, from a Regional communications perspective. All TS programs are in support of the RC function and are therefore non-statutory, with the exception of the FRCC satellite phone program which is a tool used by the Regional Entity to perform situational awareness and thus is budgeted as statutory.

### **Non Statutory Situation Awareness and Infrastructure Security Program**

This program maintains and enhances the situational awareness of the operators of the interconnected system by supporting the tools necessary to efficiently communicate Electricity Sector Information Sharing and Analysis Center information within and outside of the FRCC Region. The program also ensures that the FRCC entity shared communications networks, include the appropriate physical, operational, and cyber security protections in order to function reliably.

FRCC shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

(i) Separation of funding sources for statutory activities and non-statutory activities. The FRCC maintains a separate bank account for Statutory receivable collection. The statutory billing is done at the beginning of each quarter and an invoice is rendered to



NERC only for the statutory receivable. NERC wires monies due directly into the Statutory bank account. All non-statutory receivables are deposited into a separate bank account. Member Services invoices are rendered to each member quarterly and deposited into this separate account.

(ii) Separation of costs of statutory activities and non-statutory activities. FRCC has adopted the NERC Chart of Accounts for Expenses and the NERC Rules of Procedure Categories as well as Member Services Functional Categories and utilizes these in order to correctly code each invoice received for all goods and services as well as for staff to specify where their time is spent each day for their time accounting reports. These methods are used to ensure that no statutory funds are used to pay for non-statutory expenses and that no non-statutory funds are used to pay for statutory expenses.

Each employee and officer (with the exception of the President and CEO) turns in a time sheet with their time accounted for between statutory and non-statutory functions that they personally spent their time on. Within statutory and non-statutory they further break down their time by the function areas. Each employee and officer fills out their time sheet daily and turns them in every two weeks to the Controller. The employees use the department codes to split their time according to what they did that day. These times are totaled by the Controller and Full-Time Equivalents (FTE's) for each function are calculated.

Accounting personnel route to the responsible department head all invoices pertaining to their job responsibility. The department head assigns the functional category, signs the invoices and returns it to accounting for payment processing. The accounting staff evaluates and assigns the appropriate General Ledger account number based on the Chart of Accounts and enters both the account number and the department number on the accounts payable system. Expenses such as Facilities Rent, stationary, utilities and other items of a general nature are split to each of the functions based on FTE's, on a monthly basis. Only expenses that cannot be determined to be specifically for a particular function are split on an allocated basis. Any expenses received that are for a particular function within a particular area are charged directly to that area and are not split.

All expenses are reviewed by a Department Head, an Accounting Assistant and the Controller for accuracy of coding and assignment to particular functions whether that be for Statutory or Non-statutory.

FRCC shall provide its budget for such non-statutory activities to NERC at the same time that FRCC submits its annual budget request to NERC pursuant to Section 1. FRCC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of FRCC's non-statutory activities, and a description of the funding sources for the non-statutory activities, FRCC agrees that no costs of non-statutory activities are to be included in the calculation of FRCC's dues, fees, and other charges for its statutory activities.

**ATTACHMENT 3B:**

**REDLINED VERSION OF REVISED FRCC BYLAWS**

**REDLINED VERSION OF REVISED EXHIBIT D  
TO DELEGATION AGREEMENT INCLUDING REVISED FRCC  
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

**EXHIBIT B  
TO PRO FORMA DELEGATION AGREEMENT**

**BYLAWS  
Florida Reliability Coordinating Council, Inc.**

*Amended ~~June 27, 2008~~ February 6, 2009*



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Phone 813.289-5644 \* Fax 813.289-5646  
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Amended and Restated FRCC Regional Delegation Agreement  
Revised for ~~July 21, 2008~~ Feb 17, 2009 Compliance Filing

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**BYLAWS OF  
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**

**ARTICLE I**

**Membership**

**Section 1.1 Eligibility.**

(a) Membership in the Florida Reliability Coordinating Council, Inc. (“FRCC”) is open to any entity, without cost, that: (i) has a material interest in the reliability of the bulk power system in the FRCC region; (ii) satisfies the criteria for membership specified in this Section 1.1; (iii) qualifies for eligibility in one or more of the Sectors identified in Section 1.2; (iv) submits a written request for membership; and (v) agrees to comply with and be bound by these FRCC Bylaws (“Bylaws”) and other rules and regulations adopted by the FRCC Board of Directors, by execution of the appropriate form of Member Agreement set forth in Appendix A to these Bylaws (“Member Agreement”). Any person or entity that meets the foregoing requirements shall become a “Member” of FRCC.

(b) FRCC shall engage in two categories of activities:

(i) FRCC shall engage in the “Regional Entity Activities” specified in Section 1 of Exhibit E of the Delegation Agreement between FRCC and the North American Electric Reliability Corporation (“NERC”) dated May 2, 2007, as amended from time to time with the agreement of NERC and the approval of the Federal Energy Regulatory Commission (“Delegation Agreement”). Under the Delegation Agreement, FRCC is the Regional Entity, as defined in Sec. 215 of the Federal Power Act, with delegated authority to propose and enforce Reliability Standards for the bulk power system in the FRCC Region. The FRCC Region is defined as the geographic area of Florida east of the Apalachicola River.

(ii) FRCC shall engage in certain “Member Services Activities,” under which it provides, coordinates or administers a variety of services relating to the planning and operation of the bulk power system in the FRCC Region for or on behalf of entities meeting the criteria in Section 1.1(c)(ii) and participating in the funding of such services as specified in these Bylaws. The “Member Services” are specified in the business plan and budget approved by the Board of Directors in accordance with these Bylaws for submission to NERC under the Delegation Agreement, and as approved by NERC and the Federal Energy Regulatory Commission (“Business Plan and Budget”). Member Services are funded as specified in Section 6.2 of these Bylaws.

(c) FRCC shall have two types of Members:

(i) All Members of FRCC shall be “Regional Entity Members.” Regional Entity Members shall be eligible to participate in the Regional Entity Activities of FRCC. Such participation shall be in accordance with these Bylaws, the Member Agreement, and the Delegation Agreement, as from time to time adopted or amended and approved, and such other requirements as govern FRCC as a Regional Entity.

(ii) All Members that participate in the generation, marketing, transmission or purchase for resale of electric energy, ancillary services or capacity on, from or to the bulk power system in the FRCC Region may choose to be “Services Members,” and may participate in FRCC Member Services Activities as specified in these Bylaws. Subject to the requirements of Section 1.2, only Members that are Services Members shall be eligible to participate in decisions governing the Member Services of FRCC, or the voting rights and funding obligations of Services Members.

**Section 1.2 Voting Member.** A Voting Member is a Member that is not an Affiliate Member or an Adjunct Member. All Voting Members shall be eligible to vote on questions governing Regional Entity Activities. Only Voting Members that are Services Members shall be eligible to vote on questions governing Member Services or Member Services Activities. For purposes of the following Sector classifications, “Load Serving Entity,” whether standing alone or as part of another specified term, shall mean an entity that provides electric service to persons or entities other than the Load Serving Entity itself that purchase such service for their own use and not for resale. Voting Members shall be classified into one of the following Sectors, based on the primary nature of its activities in the FRCC Region relevant to Regional Entity Activities:

(a) **Suppliers Sector** - any entity engaged in wholesale power marketing transactions in the FRCC Region; or a generating entity that is included in the NERC Compliance Registry as a generation owner or generation operator for a facility in the FRCC Region, or that owns or is developing generation greater than 20 MW located within the FRCC Region and meets any of the following: (1) an entity with FERC-approved market-based rate authority, or (2) an exempt wholesale generator, or (3) a facility selling any output pursuant to a power purchase agreement (including fuel conversion arrangements), or (4) a FERC approved Qualifying Facility.

(b) **Non-Investor Owned Utility Wholesale Sector** - generation and transmission cooperatives and municipal joint action agencies that sell electricity to non-investor owned Load Serving Entities with native load in the FRCC Region.

(c) **Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates less than 25% of its energy requirements for retail sales or has an annual Full Requirements Energy for Load (FREL) of 1800 GWH or less in the FRCC Region.

(d) **Generating Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates at least 25% of its energy requirements for retail sales, and that has an annual Full Requirements Energy for Load (FREL) greater than 1800 GWH in the FRCC Region.

(e) **Investor Owned Utility Sector** - investor owned utilities generating and serving retail native load greater than 15,000 GWH in the FRCC Region.

(f) **General Sector** - persons or entities that take delivery of energy within the FRCC Region that is not purchased for resale; agents or associations representing groups of such entities that are commercial or industrial entities; agents or advocate groups representing small customers; and other persons or entities owning assets or engaging in commercial activities in the FRCC Region.

**Section 1.3 Affiliate Member.** An Affiliate Member is defined as an entity that (i) otherwise qualifies as a Voting Member pursuant to Section 1.1 and 1.2 and (ii) is an Affiliate of a Voting Member. For purposes of these Bylaws, being an “Affiliate” shall mean that (1) a Voting Member controls, is controlled by or is under common control with, such Affiliate Member, and (2) for any exempt wholesale generator, as defined the Public Utility Holding Company Act of 2005, as amended, the meaning provided in Section 214 of the Federal Power Act. Affiliate Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Affiliate Members shall be bound by the same obligations as Voting Members and Adjunct Members of FRCC. Questions as to whether an entity is an Affiliate of a Voting Member shall be resolved by the Board.

**Section 1.4 Adjunct Member.** A person or entity may be approved as an Adjunct Member by the Board if such entity has a material interest in the reliability of the bulk power system in the FRCC region but does not meet the definitions and requirements to join as a Voting Member or Affiliate Member. Adjunct Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Adjunct Members shall be bound by the same obligations as Voting Members and Affiliate Members of FRCC.

**Section 1.5 New Members.** The Board shall review and act upon membership applications. Prior to membership, the Board shall certify that an applicant complies with the eligibility requirements.

**Section 1.6 Membership Commitment.** Each Member of the FRCC shall be required to execute, in counterpart, a Member Agreement, as applicable, in the form shown in Appendix A to these Bylaws.

### **Section 1.7 Obligations.**

(a) Each Member of the FRCC shall promote, support and comply with the purposes and policies of the FRCC as set forth in its Certificate of Incorporation and Bylaws, and the other documents governing the activities of FRCC identified in the Bylaws.

(b) Each Member of the FRCC shall appoint a representative as provided herein to receive notices from the FRCC and shall give to the FRCC Chief Executive Officer (“CEO”) in writing (signed by a duly authorized representative of the Member) the name, business address and electronic address of the person thus appointed. An appointed representative of a Member who is unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Member.



## **Section 1.8 Participation.**

(a) For purposes of these Bylaws, an entity and all of its Affiliates shall be considered one "Entity." No Entity shall simultaneously hold more than one Voting Member status or have more than one voting representative on a Standing Committee, or more than one seat on the Board.

(b) An Entity may join FRCC in any Sector in which it qualifies for Membership, provided that an Entity may join as a Voting Member in only one Sector. In the event that an Entity qualifies for more than one Sector, such Entity may join such other Sectors as an Affiliate Member upon payment of any applicable Affiliate Member Annual Fees in accordance with Article VI Section 6.2(b)(ii) for each Sector in which such Entity desires to participate as an Affiliate Member. Once an Entity has elected to be a Voting Member of one Sector, the Entity must continue to vote in that Sector for a minimum of one (1) year. If, at any point, it is determined that an Entity no longer meets the qualifications for the Sector it selected, the Entity may not vote in that Sector; however, that Entity may then immediately elect to become a Voting Member in any Sector for which it does qualify. Questions as to whether an Entity meets the qualifications of a Sector shall be resolved by the Board.

(c) Subject to the requirements of these Bylaws and the Articles of Incorporation, each Voting Member in good standing is entitled to vote on each matter submitted to a vote of the Voting Members. A Member in good standing is one that (i) meets all qualifications for membership as provided in these Bylaws, (ii) is not in arrears for payment of any applicable annual fees for membership or payment of any other fees owed to FRCC unless such payment is being disputed in good faith, and (iii) has not been found by a court to be in breach of any contract with FRCC. Voting Members that are not in good standing are not entitled to vote on any matter until they have regained good standing.

## **ARTICLE II**

### **Meetings of Voting Members**

**Section 2.1 Annual Meeting of Voting Members.** Voting Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). The Voting Members from each Sector shall elect, by majority vote, each Voting Member having one (1) vote, Directors to the Board who will represent their Sector. The Voting Members shall conduct such other business as may be properly brought before them. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. The Annual Meeting shall be open to Affiliate Members and Adjunct Members, and such other invitees as the Board may deem appropriate, provided that the Services Members, along with Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), may meet separately to consider matters relating to Member Services.

**Section 2.2 Special Meetings.** Special meetings of the Voting Members, for any purpose or purposes, unless otherwise prescribed by the laws of the State of Florida, or by the

Articles of Incorporation, may be called by the Chair of the Board. Special meetings of the Regional Entity Members shall be called upon request of six (6) or more Voting Members representing three (3) or more Sectors. Special meetings of the Services Members shall be called upon request of six (6) or more Voting Members that are Services Members representing three (3) or more Sectors. Notice of a special meeting stating the place, date, hour and agenda for the special meeting shall be given to the Voting Members not less than three (3) business days before the meeting. Such request for a special meeting shall state the purpose or purposes of the proposed special meeting, which shall be included as part of an agenda to be distributed to the Voting Members not less than three (3) business days before the meeting. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other.

**Section 2.3 Place of Meeting.** All meetings shall be held at or near the principal office of the FRCC in Tampa, Florida, or at such other place within or outside the State of Florida as shall be determined from time to time by the Board.

**Section 2.4 Notice of Meetings.**

(a) Notice of the Annual Meeting or any regular or special meeting of the Voting Members shall be sent by mail or electronic means to each Member's representative at the business or electronic address specified in accordance with Section 1.7(b) at least ten (10) business days before the date of the meeting. The notice shall set forth a proposed agenda for the meeting, but any matter may be considered and acted upon at any meeting, whether or not the matter was listed in the proposed agenda, if addition of the item to the agenda is approved at the meeting by the vote of the eligible Voting Members whose votes equal sixty percent (60%) or more of the total weighted sector vote of the eligible Voting Members; provided, however, that at least three (3) Sectors are represented in the affirmative. Meetings may be held at any time without notice if all of the eligible Voting Members are present, or if those not present waive notice in writing either before or after the meeting.

(b) The record date for determining Members entitled to notice shall be one month prior to the meeting date.

**Section 2.5 Quorum.** Representation at any meeting of the Regional Entity Members of more than 50% of the Voting Members, or representation at any meeting of the Services Members of more than 50% of the Voting Members that are Services Members, shall constitute a quorum for the transaction of business at such meeting; provided, however, that in each case at least four (4) eligible Sectors are represented.

**Section 2.6 Voting.** Voting by Voting Members shall be by the six (6) Sectors as defined in Section 1.2, except as otherwise provided herein. Each Voting Member within a Sector has one non-divisible vote. Each Sector shall have a “Sector Vote” in proportion to the voting rights specified in Section 3.2(e), which is to be split into an affirmative and a negative component, in the proportion that each component bears to the total votes of the Voting Members within that Sector. Action by the Voting Members shall require affirmative Sector Votes greater than 6.50.

**Section 2.7 Action without Meeting.** Any action that may be taken at a meeting of the Regional Entity Members or the Services Members may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed by all Voting Members eligible to vote in such meeting before the action is taken.

**Section 2.8 Remote Attendance.** Any Member otherwise eligible may participate in any meeting by telephone, videoconference communications equipment, or other means enabling all persons participating in the meeting to communicate with each other. A Member participating in a meeting by such means shall be deemed present in person at such meeting.

**Section 2.9 Termination of Members.**

(a) A Member may be terminated for non-payment of fees or monies due FRCC as provided in Section 6.3, or for a significant violation of obligations as set forth in Section 1.7. The Board may, by resolution, establish a fair and reasonable procedure to terminate a Member.

(b) A Member whose membership has been terminated shall be liable to FRCC for fees and any other monies due FRCC as a result of obligations incurred or commitments made prior to termination.

**Section 2.10 Withdrawal.** Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of FRCC at any time upon written notice to the CEO, whereupon it shall cease to be a Member and shall cease to be entitled or obligated to participate in the activities of the Board, Standing Committees, or any subcommittees, and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of fees and expenses for a fiscal year, the Member shall be obligated to pay its fees and other monies due to FRCC for the full fiscal year within which such termination is effective.

**Section 2.11 Reinstatement.** A former Member shall be required to apply for Membership as set forth in Section 1.1. The Board may reinstate Membership on any reasonable terms that the Board deems appropriate.

**Section 2.12 Property Ownership and Control.** Subject to applicable laws, rules, regulations, agreements, and FRCC protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction, maintenance and operation of its own facilities, present and future. A Member has no interest in the property of FRCC and waives the right to require a partition of any FRCC property.

## **ARTICLE III**

### **Board of Directors**

**Section 3.1 Powers.** The affairs of FRCC shall be managed by the Board of Directors ("Board"). The Board may exercise all such powers of the FRCC and do all such lawful acts and things as are not prohibited by the laws of the State of Florida, by the Federal Power Act, by the Articles of Incorporation or by these Bylaws.

#### **Section 3.2 Number, Election, Tenure and Governance.**

(a) Number. The Board shall include (16) Directors allocated among the Sectors as follows, and such other Directors as provided in by Section 3.2(b)(4):

- (1) Suppliers Sector- three (3) Directors
- (2) Non-Investor Owned Utility Wholesale Sector - two (2) Directors
- (3) Load Serving Entity Sector-
  - Municipal - one (1) Director
  - Cooperative - one (1) Director
- (4) Generating Load Serving Entity Sector - three (3) Directors

- (5) Investor Owned Utility Sector - Three (3) Directors
- (6) General Sector - Two (2) Directors
- (7) The CEO of FRCC - an ex-officio non-voting Director.

(b) Election.

(1) Directors, with the exception of the CEO, shall be elected as described herein.

(2) Within each Sector, only Voting Members from a given Sector may elect Directors for that Sector.

(3) Within the Load Serving Entity Sector, Director(s) representing 0.5 votes shall all be from a municipal and Director(s) representing 0.5 votes shall be from a cooperative.

(4) Within each Sector, Voting Members from a given Sector may, by majority vote, elect additional Directors subject to a maximum of five (5) Directors representing such Sector. The total votes of the Directors for such Sector shall not exceed the total votes of the Directors of such Sector specified in Section 3.2(a).

(c) Alternate Director. Any Director unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Director.

(d) Term. The term for all Directors shall be two (2) years. Any Director may be reelected for consecutive terms, without limitation. Directors within a Sector shall have staggered terms as determined by the Sector.

(e) Voting Rights.

(1) Except as provided for in subsections (2) and (3) below, each Sector shall have the number of votes as specified below:

• Suppliers Sector	2.5 Votes
• Non-Investor Owned Utility Wholesale Sector	2.0 Votes
• Load Serving Entity Sector	
- Municipal	0.5 Votes
- Cooperative	0.5 Votes
• Generating Load Serving Entity Sector	3.0 Votes
• Investor Owned Utility Sector	3.5 Votes
• General Sector	1.0 Vote
Total	13.0 Votes

(2) Each Director, as defined in Section 3.2(a) and 3.2 (b), shall have an equal proportional vote of that Sector's total voting strength. This provision shall

apply separately to the municipal and cooperative Directors of the Load Serving Entity Sector.

- (3) If the majority of the Voting Members of a Sector are Services Members, Directors elected by that sector shall be deemed "Services Member Directors." Only Services Member Directors shall be eligible to vote on questions governing Member Services or Member Services Activities. Deliberations on such matters may be limited to Services Member Directors, Voting Members that are Services Members, and Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), upon the vote of the Services Member Directors.
- (4) The CEO of FRCC shall not have a vote.

(f) **Limitations.** Each person or alternate serving on the Board shall be a representative of a Voting Member. Unless otherwise provided in these Bylaws, if a representative of a Voting Member is elected to serve on the Board, such person shall only be eligible to serve in such capacity so long as such person remains the representative of said Voting Member. A Voting Member shall not have more than one (1) officer, employee or agent serving as a Director.

**Section 3.3 Meetings.** Regular meetings of the Board shall be held at such times and places, within or outside the State of Florida, as may be determined by the Board. Special meetings of the Board may be called by the Chair. Special meetings shall be called upon request of six (6) or more Directors. Regular or Special Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. Except as specified in Section 3.2(e)(3), the meetings of the Board shall be open to all Members, and such other invitees as the Board may deem appropriate. The Board may meet in closed session to discuss matters of a confidential nature, including but not limited to personnel matters, litigation, or commercially sensitive information of any person or entity.

**Section 3.4 Notice of Meetings.** Notice of any regular or special meeting of the Board shall be sent by mail or electronic means to each Director, and to each Member, at such Director's and Member's usual place of business at least (ten) 10 business days, in the case of a regular meeting, or (five) 5 business days, in the case of a special meeting, before the date of the meeting. Such notice shall also be sent to the observers of the Board specified in Section 8.1. The notice shall set forth a proposed agenda for the meeting. Subject to the requirements of Section 3.2(e)(3), no agenda item may be added to the agenda at any meeting of the Board which requires action by the Board unless all Directors are present and all agree to allow such an item to be put to a vote. Meetings may be held at any time without notice if all of the Directors of the Board are present, or if those not present waive notice in writing either before or after the meeting.

**Section 3.5 Quorum.** The presence at a meeting of the Directors whose votes equal sixty percent (60%) or more of the total voting strength of the Board, or in the case of matters governed by Section 3.2(e)(3), votes equal to sixty percent (60%) or more of the total voting

strength of the Directors eligible to vote, shall constitute a quorum for any action of the Board, provided, however, that in each case at least one Director from at least four (4) Sectors are present. If at any meeting a quorum shall fail to attend, a majority of those Directors present at the meeting may adjourn that meeting without further notice until a quorum shall attend. Once a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**Section 3.6 Voting.** Action by the Board shall require approval of sixty percent (60%) or more of the total eligible voting strength of the Board.

**Section 3.7 Remote Attendance.** Directors shall be deemed present and voting at a meeting of the Board if participating in the meeting by means of a conference telephone, video conferencing, or other means enabling all persons participating in the meeting to communicate with each other.

**Section 3.8 Action without Meeting.** Any action that may be taken at a meeting of the Board may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed before the action by all Directors eligible to participate in such action.

**Section 3.9 Vacancies and Removal.** A Director may be removed with cause at any time by an affirmative vote of 60% of the Voting Members of the Sector that elected that Director. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the remaining total voting strength of the Board. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner. A vacancy may be filled only by the Voting Members of the Sector in which the vacancy occurs. Any Director so chosen shall hold office until his or her successor is duly elected and qualified or until his or her earlier resignation, ineligibility or removal.

**Section 3.10 Officers.** At the Board of Directors meeting following the Annual Meeting of the Voting Members, the Board shall elect a Chair, Vice Chair, and Secretary-Treasurer, who shall be the officers of the FRCC. No two officers of FRCC shall be officers, employees or agents of Voting Members of the same Sector or its Affiliates. The CEO of FRCC may not be elected to act as Chair, Vice-Chair or Secretary/Treasurer.

(a) Term of Office. Each officer of the Board of Directors shall hold office for two (2) fiscal years, and until his or her successor is duly elected and qualified.

(b) Removal of Officers. Any officer of the Board of Directors may be removed with or without cause at any time by the affirmative vote of seventy percent (70%) of the total voting strength of the Board.

(c) Compensation. There shall be no compensation paid to any officer of the Board of Directors of FRCC, provided that an officer serving on the staff of FRCC may be compensated for their services on the staff of FRCC.

### **Section 3.11 Responsibilities of Board of Director Officers**

(a) Chair. The Chair shall serve as the Chair of the Board. The Chair shall preside at all meetings of the Members and Board, provided that, if the Chair is not eligible to vote in a meeting governed by Section 3.2(e)(3), the Directors that are eligible shall select one of the number to preside at such meeting. The Chair shall be responsible for the preparation of the agenda for all meetings of the Members and Board. The Chair shall be a member of and preside over a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(b) Vice Chair. The Vice Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair, subject to the provisions of Section 3.11(a), and shall perform such other duties and have such other powers as the Board may from time to time prescribe. The Vice Chair shall be a member of a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(c) Secretary-Treasurer. The Secretary-Treasurer shall be responsible to assure that the FRCC staff has adequate procedures to distribute the agenda of the meetings of the Voting Members and the Board, keep the minutes of the proceedings of said meetings, and maintain the financial books and records of the FRCC, including disbursement of the funds of the FRCC in accordance with the authorized annual budget. The Secretary-Treasurer shall be a member of the Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

**Section 3.12 Vacancy.** Any vacancy in a Board of Director Officer occurring for any reason shall be filled as specified in Section 3.9.

## **ARTICLE IV**

### **Chief Executive Officer**

**Section 4.1 CEO.** The Board shall hire the CEO who, under the Board's direction, shall carry on the general affairs of the FRCC. The CEO shall be a member of the staff of FRCC and shall be a non-voting Director. It shall be the CEO's duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of FRCC. The CEO shall serve as President of FRCC. The CEO shall comply with all directives of the Board. All agents and employees shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

## **ARTICLE V**

### **Standing Committees**

**Section 5.1 Standing Committees.** There shall be a Planning Committee, an Operating Committee, a Compliance Committee, and such other committees, subcommittees,



and task forces as the Board may appoint, when deemed necessary to carry out the purposes of the FRCC.

**Section 5.2 Planning Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Planning Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Planning Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Planning Committee shall report directly to the Board and is charged with the responsibility of promoting the reliability of the bulk power system in the FRCC Region, and assessing and encouraging generation and transmission adequacy. The Planning Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.3 Operating Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Operating Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Operating Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Operating Committee shall report directly to the Board and is charged with responsibility for the coordination, operations planning, operation and maintenance of the bulk power system in the FRCC Region. The Operating Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.4 Compliance Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Compliance Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Compliance Committee shall report directly to the Board and is charged with responsibility for the development and implementation of programs to ensure compliance for both FRCC Regional Reliability Standards and NERC Reliability Standards. The Compliance Committee is not to be confused with the Board Compliance Committee which is primarily a “hearing body” and has a different voting structure as outlined in Exhibit D of the Delegation Agreement between the North American Electric Reliability Corporation and FRCC.

**Section 5.5 Rules of Procedure.** Each Standing Committee shall set its rules of procedure, provided that quorum, voting rights and voting shall be as specified in Sections 5.7 and 5.8. Such Rules of Procedure shall be as approved by the Board. All action by any Standing Committee shall be reported as prescribed herein and shall be subject to revision, alteration and approval by the Board.

**Section 5.6 Quorum.** Representation at any meeting of a Standing Committee of sixty percent (60%) or more of the total voting strength of the Standing Committee shall constitute a quorum for the transaction of business at such meeting; provided, however, that action on matters dealing with the scope or funding of Member Services shall require sixty percent (60%) or more of the total voting strength of members of the Standing Committee

representing Voting Members that are Services Members; and provided further that a quorum shall require that at least three (3) Sectors are represented, all three of which shall be Sectors a majority of the members of which are Services Members in the case of a quorum for action on matters governing Member Services.

**Section 5.7 Voting. Voting is by Sector.** Each voting representative present at a meeting is assigned a vote equal to the voting strength of his or her Sector, as provided in this section, divided by the number of voting representatives present in that Sector, except that no voting representative present at a meeting shall have more than one (1) vote, except an Investor Owned Utility Sector voting representative who may have up to 1.167 votes. Action by a Standing Committee shall require an affirmative vote equal to or greater than sixty percent (60%) of the total eligible voting strength of the Standing Committee.

Sector Votes

(1) Suppliers Sector	2.5 Votes
(2) Non-Investor Owned Utility Wholesale Sector	2.0 Votes
(3) Load Serving Entity Sector	
Municipal	0.5 Vote
Cooperative	0.5 Vote
(4) Generating Load Serving Entity Sector	3.0 Votes
(5) Investor Owned Utility Sector	3.5 Votes
(6) General Sector	1.0 Vote
Total	13.0 Votes

Only representatives of Voting Members that are Services Members shall be eligible to vote on questions governing Member Services.

**Section 5.8 Meetings.** Regular meetings of the Standing Committees shall be held at such times and places, within or outside the State of Florida, as may be determined by the Standing Committees. Special meetings of the Standing Committees may be called by the Chair or upon the request of representatives from three (3) different Sectors. Regular or Special Meetings may be held by telephone conferencing, video conferencing, or by other means enabling all participants in the meeting to communicate with each other. The meetings of the Standing Committees shall be open to all Members, and such other invitees as the Board may deem appropriate.

**ARTICLE VI**

**General Provisions**

**Section 6.1 Budget.** The Board shall annually adopt a budget for the FRCC for administrative expenses of the FRCC, including salaries, and for the costs associated with the various committees, subcommittees, professional services, projects and studies. The Board shall approve the scope and funding of Member Services, in accordance with the provisions of these

Bylaws. The funding for Member Services special projects approved by the Board may be based on a special funding, with an equitable allocation of the costs for the special project as approved by the Board. The budget may be amended from time to time during the fiscal year as determined by the Board, subject to the filing and approval requirements applicable to FRCC as a Regional Entity under the Delegation Agreement.

## **Section 6.2 Funding.**

(a) The funding of FRCC's Regional Entity Activities shall be in accordance with the provisions of Exhibit E and the section numbered eight (8) of the Delegation Agreement.

(b) The Member Services of FRCC shall be funded through an allocation of their costs to all Members that are Services Members in accordance with the provisions of subsections 6.2(b)(i) - (iii) below. The funding of all Member Services shall be kept separate from the funding of Regional Entity Activities as specified in the Business Plan and Budget.

(i) **Services Members.** The allocation for Voting Members that are Services Members shall be based on the following calculation; provided, however, that in no event shall the allocation be less than \$20,000 per annum.

$$\text{Services Member Allocation} = 0.25 (1/N) + 0.25 (B/C) + 0.25 (D/E) + 0.25 (F/G)$$

- N Total number of voting Services Members
- B Voting Services Member's previous-year Full Requirements Energy for Load (FREL) within the FRCC
- C Total of factor B for all voting Services Members
- D Voting Services Member's Net Summer Generating Capacity within the FRCC Region as of December 31 of the previous year, as defined in the FRCC Load and Resource Plan
- E Total of factor D for all voting Services Members
- F Sum of Circuit Miles of Transmission Facilities (69kV and above) of voting Services Members within the FRCC Region times the respective operating voltage as of December 31 of the previous year
- G Total of factor F for all voting Services Members

**Full Requirements Energy for Load (FREL)** The net electrical energy requirements of the Services Member's electric system, and the net electric energy requirements of all full requirements customers of the Services Member, except if a full requirements customer of a Services Member joins FRCC. In such case, the electrical energy requirements of such full requirements customer will only be counted for the funding calculation for that Services Member who is the full requirements customer, and not for the Services Member who is the supplier of the full requirements. There should be no double counting of FREL between Services Members.

**Net Summer Generating Capacity** The maximum summer rated capacity,

modified for ambient limitations, that a generating unit can sustain over a specified period, less the capacity used to supply the demand of station service or auxiliary needs. For jointly owned units, the Net Capacity will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

**Circuit Miles of Transmission Facilities** The distance (following the path of transmission facility) in miles between substations or switching stations times the number of circuits at the same voltage level. For jointly owned transmission facilities, the Circuit Miles of Transmission Facilities will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

(ii) Affiliate Members. The fee for an Affiliate Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Affiliate Member, only participating in Regional Entity Activities, shall be waived.

(iii) Adjunct Members. The fees for an Adjunct Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Adjunct Member, only participating in Regional Entity Activities, shall be waived.

**Section 6.3 Fees.** The Member Services membership fee shall be due and payable concurrent with the submission of the written application for membership. The initial membership fee will be prorated on an annual basis depending upon the quarter in which a Member joins. Thereafter, membership fees shall be due and payable on or before January 1st of each year or in installments as determined by the Board. The FRCC shall notify, in writing, any Member who is delinquent in the payment of any applicable membership fee. The notice shall provide a time certain, not to exceed thirty days (30) days from the date of the written notice, during which any such delinquency may be cured. Failure to cure a delinquency within the stated time will result in the loss of all membership rights and designations. In the event of an uncured lapse in the payment of a fee, membership in the FRCC shall be terminated.

**Section 6.4 Staff.** The FRCC shall employ a staff, including the CEO, to carry out the objectives of the organization. The CEO shall be a non-voting Director of the Board. The duties of the CEO are as defined in Article IV, Section 4.1.

**Section 6.5 Expenses.** The personal expenses of each Member and Director participating in the activities of the FRCC and its committees and subcommittees shall be borne by the Member on whose behalf such person is acting, unless determined otherwise by the Board.

**Section 6.6 Minimum Sector Membership.** If the number of Voting Members of a Sector is not greater than one (1), such Sector shall not be entitled to a vote at the Voting Members meetings, Board of Directors meetings, or the Standing Committee meetings.

**Section 6.7 Indemnification.** The FRCC shall indemnify and hold harmless, to the maximum extent permitted by law, any Member, Director, Member representative, agent, officer or employee of the FRCC and the heirs, estates, successors or assigns of any of them, from any and all claims or liabilities, including costs or attorneys' fees for defending against assertion of any such claim or liability, arising from any act or failure to act of such person for, on behalf of, or at the direction of the FRCC, unless such act or failure to act constituted a willful violation of state, federal or local law, willful misconduct, or gross negligence. With the approval of the Board, the FRCC may reimburse costs, attorneys fees, and other expenses for defending against assertions of any such claims or liabilities prior to the final disposition of any such proceeding. The foregoing rights to be indemnified, held harmless, or reimbursed shall not operate in derogation or prohibition of any other rights which the person indemnified, held harmless or reimbursed may have. The FRCC, by vote of the Board, shall purchase insurance against all or any part of the liabilities which may be incurred by the FRCC and may cause the FRCC to indemnify and hold harmless as and to the extent it may deem appropriate such other person or persons as it may deem appropriate.

**Section 6.8 Fiscal Year.** The fiscal year of the FRCC shall be the twelve (12) month period of January 1<sup>st</sup> through December 31<sup>st</sup>.

**Section 6.9 Depositories.** All funds of the FRCC shall be deposited in the name of the FRCC in such bank, banks or other financial institutions as the CEO shall from time to time designate and shall be drawn out on checks, drafts or other orders signed on behalf of the FRCC by such person or persons as the Board shall from time to time designate.

## ARTICLE VII

### Amendments

**Section 7.1 Amendments.** Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership, subject to the provisions of Section 1.2, and subject to the requirements for approval by NERC and the Federal Energy Regulatory Commission applicable to the FRCC as a Regional Entity, these Bylaws may be amended, altered, or repealed through the following procedure:

(a) Any Voting Member or Director may suggest amendments to these Bylaws. Such suggestions must include a proposed amendment, and any necessary supporting documents. They should be sent to the CEO of FRCC for placement on the agenda for a Board meeting in the time and manner prescribed by the Board.

(b) If the proposal is approved by the Board of Directors, the Board shall place the proposal on the agenda of either the next Annual Meeting of the Voting Members, or pursuant to Board discretion, at a Special Meeting of the Voting Members called for that purpose.

(c) Voting Members shall vote to enact the Board-approved amendment in accordance with Sections 2.5 and 2.6, and subject to the provisions of Section 1.2 of the Bylaws.

**Section 7.2 Review of Governance.** The Board shall appoint a task force to review these Bylaws, and to submit recommendations to the Board on necessary amendments, at the discretion of the Board or if any of the following events occurs. Such task force shall include representation from each Sector.

(a) The number of Voting Members in a Sector is not greater than one (1).

(b) A Regional Transmission Organization of any type is approved by the Federal Energy Regulatory Commission to operate in the FRCC Region.

(c) Any federal or state legislation or regulatory action that significantly alters the functions of the FRCC.

(d) Any new entity that has or is expected to have financial transactions in the wholesale electric market in the FRCC Region wishes to join the FRCC, and does not otherwise meet the membership requirements as then defined in these Bylaws.

## ARTICLE VIII

### Observers of the Board

**Section 8.1 Observers of the Board.** The Chairman of the Florida Public Service Commission, or designee, shall be invited to attend meetings of the Board. The Board shall invite other observers as the Board deems appropriate.

## ARTICLE IX

**Section 9.1 Board Compliance Committee.** FRCC shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be the FRCC Board Compliance Committee (BCC), a balanced compliance panel reporting directly to the FRCC's Board of Directors.

The BCC will consist of one (1) Voting Member from each of the six (6) sectors in the FRCC, who shall be a member of the Board of Directors. Each year, two (2) members from each Sector of the FRCC Board of Directors will volunteer to serve in a BCC pool. At the time a hearing request is received, the Chair of the FRCC Board of Directors will appoint one member from each Sector to form the BCC for that hearing. The Board Member from the Registered Entity that has requested the hearing will not be selected for that BCC. In the event one (1) Sector of the FRCC declines to participate on the BCC, the Chair of the Board of Directors shall randomly select one (1) additional BCC member from the remaining five (5) Sectors to constitute the BCC. The Chair of the FRCC Board of Directors will appoint a Chair and Vice-Chair of the BCC. Terms of BCC members will be equivalent to the time it takes to complete the hearing for which they were selected. Members may be re-appointed to subsequent terms without any limits to the number of terms they serve.

FRCC Industry Sectors are as follows:

- One (1) Member from the Investor Owned Utility Sector
- One (1) Member from the Suppliers Sector
- One (1) Member from the Non-Investor Owned Utility Wholesale Sector
- One(1) Member from the Load Serving Entity Sector
- One (1) Member from the Generating Load Serving Entity Sector
- One (1) Member from the General Sector

Each member of the BCC shall be a full voting member. There will be no alternates or proxies for the BCC members. Decisions of the BCC shall require (i) a quorum to be present requiring at least fifty (50) percent of the number of members assigned to the BCC provided, however, that

in each case at least four (4) eligible Sectors are represented and (ii) a majority vote of the members of the BCC voting on the decision.

## ARTICLE X

### Audit

**Section 10.1 Audit.** The Board shall engage a certified public accounting firm to audit the books and accounts of the FRCC for each fiscal year.

## ARTICLE XI

### Miscellaneous Provisions

**Section 11.1 Headings.** The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

**Section 11.2 Number and Gender.** All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.

**Section 11.3 Parties Bound.** These Bylaws will bind and inure to the benefit of any Members, Director, Member representative, agent, officer, or employee of the FRCC and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

**Section 11.4 Minority Positions.** Any Voting Member or Standing Committee Representative who has a minority opinion on any significant issue may present the minority opinion to the Board in a manner as prescribed by the Board.

Amended: ~~June 27, 2008~~February 6, 2009



**APPENDIX A**

**Voting Member Agreement - Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Voting Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Voting Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Affiliate Member Agreement – Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Affiliate Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Affiliate Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_  
(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Adjunct Member Agreement – \_\_\_\_\_ Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Adjunct Member)  
promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Adjunct Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

## **HISTORY OF REVISIONS**

**January, 1998**

**Amended December 19, 2001**

**Amended March 2, 2006**

**Amended September 25, 2007**

**Amended June 27, 2008**

**Amended February 6, 2009**

## **EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

### **1.0 FRCC COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

#### **1.1 Obligations of Florida Reliability Coordinating Council, Inc.**

FRCC will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within FRCC's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

#### **1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program**

The FRCC has "customized" the NERC pro-forma document by changing "Compliance Enforcement Authority" and "Regional Entity" to "FRCC" where appropriate. FRCC has also removed any reference to "Applicable Governmental Authority" since our boundary is fully within the U.S. In addition, the following items are being identified to show where FRCC has provided additional process detail explaining how we will implement the NERC Compliance Monitoring and Enforcement Program. We believe these items add needed detail and clarification and do not constitute "deviations" from NERC's Compliance Monitoring and Enforcement Program.

##### Section 1.1 - Definitions

The FRCC has added a definition for "Business Days". Registered Entities may observe holidays differently than the FRCC. To ensure complete understanding of the term "business day" especially as it relates to the defined term "Required Date", the FRCC has included the following definition:

*1.1.4 Business Days: Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule; New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day.*

The FRCC has included a definition of "Reliability Standard". This was missing and needed clarification:

*1.1.19 Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.*

##### Section 2.0 – Identification of Organization Responsible for complying with Reliability Standards

In the first paragraph, the FRCC removed the word "promptly" and replaced it with "within thirty (30) days" to clarify the time frame for which a Registered Entity is to notify the FRCC with changes in its registration information. Promptly is an ambiguous term and the 30 day timeframe corresponds with the minimum compliance monitoring period currently identified in NERC's Reliability Standards.

### Section 3.0 – Compliance Monitoring and Enforcement Processes

The FRCC has added a paragraph that identifies the use of our FRCC Compliance Committee in a non-decisional review process. After initial determination of an alleged violation by the FRCC Compliance Staff, and after required notification to NERC and the Registered Entity, the FRCC Compliance Staff may provide their determinations to the FRCC Compliance Committee for a technical review. This review will only be initiated by FRCC Compliance Staff. Such review shall only be called when it is deemed to help provide an increased understanding of how to comply with Reliability Standards. This is especially important for those standard requirements that may lack the clarity necessary to ensure compliance and increased reliability. In addition the results of this technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation. This review will not be used to determine penalties or sanctions for violations. The FRCC believes this process assures an increased understanding of standard requirements by both registered entities and compliance staff; helps build trust and transparency in the process and ultimately results in increased reliability to the bulk power system.

### Section 5.2 – Registered Entity Response

The FRCC has identified that a FRCC Board Compliance Committee will appoint a panel called the Compliance Advisory Panel to work with the Registered Entity to resolve any conflicts within the forty day period each time a Registered Entity contests an alleged violation and sanction and/or penalty. The FRCC believes this process will resolve many disputes, thereby reducing the number of costly and time consuming formal hearings.

The FRCC has added a timeframe of 10 business days for a Registered Entity to request a hearing if the dispute was not resolved in the 40 days working with the Compliance Advisory Panel. This timing was needed to clarify the timeframe for the decision to be made.

### Section 5.6 – Notice of Penalty

The FRCC changed the word “The” to “Any” at the beginning of the 2<sup>nd</sup> paragraph to provide needed clarification. Words were added in the preceding paragraph to clarify that NERC may revise a penalty or sanction that the FRCC submits. The word “The” in the 2<sup>nd</sup> paragraph seemed to refer only to the revised penalty which is incorrect. The 2<sup>nd</sup> paragraph applies to any penalty that is ultimately filed with FERC.

### Attachment 2 – Hearing Procedures

The FRCC accepted the Hearing Procedures developed jointly by the Regional Entities in the Eastern Interconnection. However, we have made some changes to add detail or clarify the document.

### Attachment 2 – Section 1.1.5 Definitions

Throughout Attachment 2 the FRCC has inserted the term “business” before days that are less than fifteen (15) to be consistent with the terminology in the body of the program document itself. This is supported by the inclusion of the definition of “business days” mentioned above.

The FRCC added “and FRCC” to the first paragraph of this section to clarify that both the NERC pro-forma definitions and the FRCC added definitions are included.

#### Attachment 2 – Section 1.2.5 Computation of Time

The FRCC has deleted this section as we believe it to be very confusing. The definition of “business days” and the addition of the term “business” to clarify business days from calendar days eliminate the need for this section. We left it intentionally blank to keep the numbering the same for the rest of the document.

## **2.0 REGIONAL HEARING OF COMPLIANCE MATTERS**

**FRCC** shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be the FRCC Board Compliance Committee (BCC), a balanced compliance panel reporting directly to the FRCC’s Board of Directors.

The BCC will consist of one (1) Voting Member from each of the six (6) sectors in the FRCC, who shall be a member of the Board of Directors. Each year, two (2) members from each Sector of the FRCC Board of Directors will volunteer to serve in a BCC pool. At the time a hearing request is received, the Chair of the FRCC Board of Directors will appoint one member from each Sector to form the BCC for that hearing. The Board Member from the Registered Entity that has requested the hearing will not be selected for that BCC. In the event one (1) Sector of the FRCC declines to participate on the BCC, the Chair of the Board of Directors shall randomly select one (1) additional BCC member from the remaining five (5) Sectors to constitute the BCC. The Chair of the FRCC Board of Directors will appoint a Chair and Vice-Chair of the BCC. Terms of BCC members will be equivalent to the time it takes to complete the hearing for which they were selected. Members may be re-appointed to subsequent terms without any limits to the number of terms they serve.

FRCC Industry Sectors are as follows:

- One (1) Member from the Investor Owned Utility Sector
- One (1) Member from the Suppliers Sector
- One (1) Member from the Non-Investor Owned Utility Wholesale Sector
- One(1) Member from the Load Serving Entity Sector
- One (1) Member from the Generating Load Serving Entity Sector
- One (1) Member from the General Sector

Each member of the BCC shall be a full voting member. There will be no alternates or proxies for the BCC members. Decisions of the BCC shall require (i) a quorum to be present requiring

at least fifty (50) percent of the number of members assigned to the BCC provided, however, that in each case at least four (4) eligible Sectors are represented and (ii) a majority vote of the members of the BCC voting on the decision.

### **3.0 OTHER DECISION-MAKING BODIES**

The FRCC has engaged NERC to oversee the compliance monitoring and enforcement responsibility as related to FRCC's compliance with Reliability Standard requirements that are applicable to the functions for which FRCC is a Registered Entity.





**Florida Reliability Coordinating Council**  
**Compliance Monitoring and Enforcement Program**

Amended ~~July 21, 2008~~ February 6, 2009

# Compliance Monitoring and Enforcement Program

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

### ATTACHMENT 2 – HEARING PROCEDURES

# Compliance Monitoring and Enforcement Program

## COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Florida Reliability Coordinating Council (“FRCC”) to monitor, assess, and enforce compliance with Reliability Standards within the FRCC Region<sup>1</sup>. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1 Alleged Violation:** A potential violation for which the FRCC has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2 Annual Audit Plan:** A plan developed annually by the FRCC that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3 Applicable Governmental Authority:** The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4 Business Days:** Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule. New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve and Christmas Day.
- 1.1.5 Complaint:** An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.6 Compliance Audit:** A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.7 Compliance Audit Participants:** Registered Entities scheduled to be audited and the audit team members.

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<sup>1</sup> The FRCC Region is peninsular Florida east of the Apalachicola River

## Compliance Monitoring and Enforcement Program

- 1.1.8** Compliance Enforcement Authority: NERC or the FRCC in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.9** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.10** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by the FRCC or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.
- 1.1.11** Exception Reporting: Information provided to the FRCC by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.12** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including FRCC decision, Settlement Agreement, or otherwise.
- 1.1.13** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.14** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the FRCC in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.15** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the FRCC on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.16** FRCC Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of

## Compliance Monitoring and Enforcement Program

compliance within the FRCC's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.

- 1.1.17** FRCC Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the FRCC, (3) the methods to be used by the FRCC for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the FRCC's Annual Audit Plan.
- 1.1.18** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.19** Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.
- 1.1.20** Remedial Action Directive: An action (other than a penalty or sanction) required by the FRCC that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.21** Required Date: The date given a Registered Entity in a notice from the FRCC by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.22** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the FRCC and that are included for monitoring in the FRCC Implementation Plan.
- 1.1.23** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.

## Compliance Monitoring and Enforcement Program

**1.1.24 Spot Checking:** A process in which the FRCC requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

### **2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS**

The FRCC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. Each Registered Entity shall inform the FRCC within thirty (30) days of changes to its registration information. The FRCC shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The FRCC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The FRCC will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The FRCC will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

The FRCC shall develop, maintain, and provide to NERC a FRCC Compliance Registry with updates as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the

## Compliance Monitoring and Enforcement Program

specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard.

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The FRCC will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by the FRCC through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The FRCC Compliance Staff may provide the determination of an alleged violation to the FRCC Compliance Committee (CC) for a non-decisional technical review. This technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation.

The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the FRCC may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the FRCC. NERC or the FRCC may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

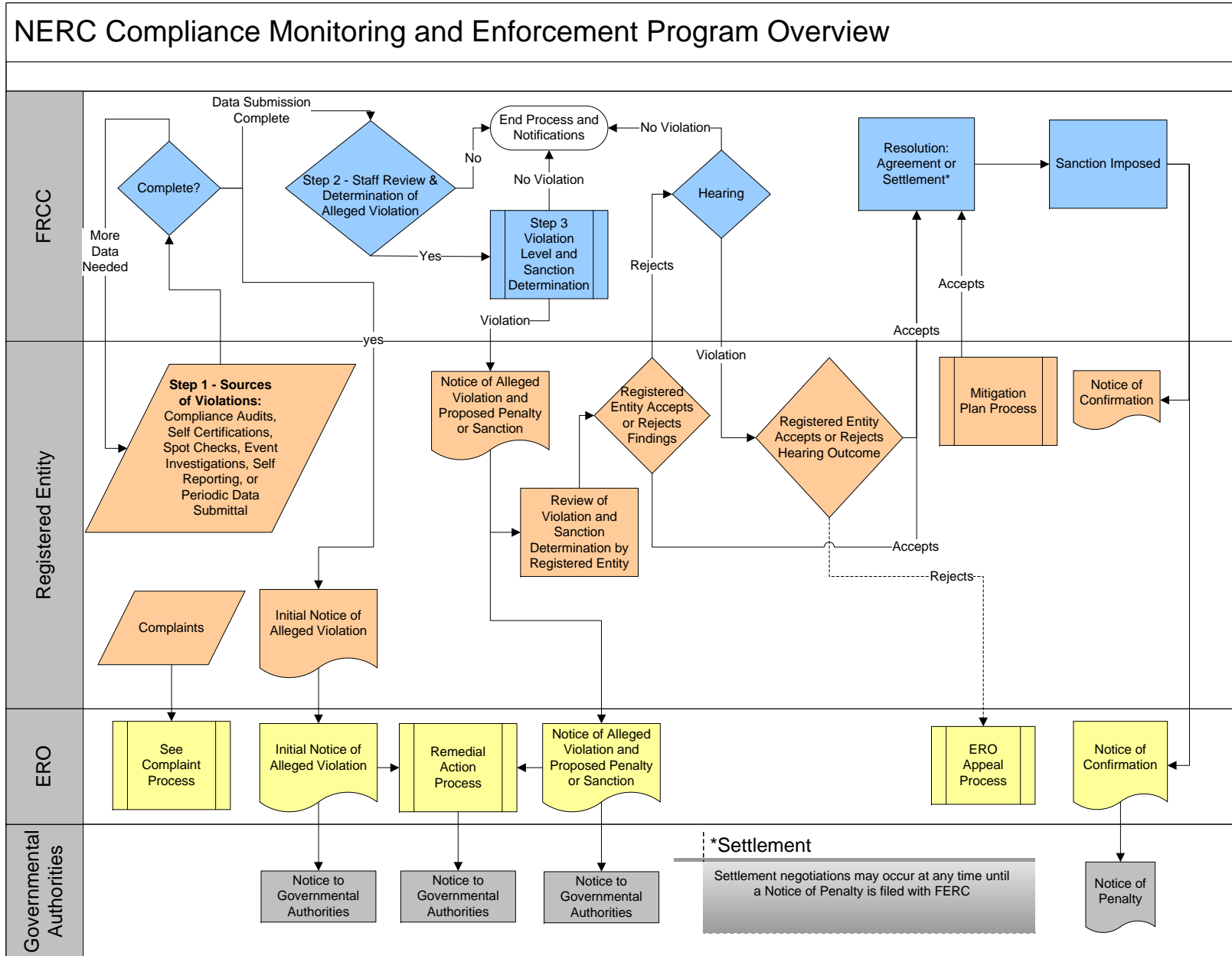
**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall

## Compliance Monitoring and Enforcement Program

process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.



**Compliance Monitoring and Enforcement Program**  
**Figure 3.0 – Compliance Monitoring and Enforcement Program Overview**



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted [Accounting Auditing](#) Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**.<sup>2</sup>

- The FRCC distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The FRCC provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, the FRCC informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the FRCC provides the audit schedules to FERC and based upon the agreements in place with FERC.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, the FRCC notifies the Registered Entity of the Compliance Audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the FRCC will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to the FRCC the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the Compliance Audit. The audit team follows NERC audit guidelines in the implementation of the Compliance Audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an audit report, including an assessment of compliance with the Reliability Standards, to the FRCC.

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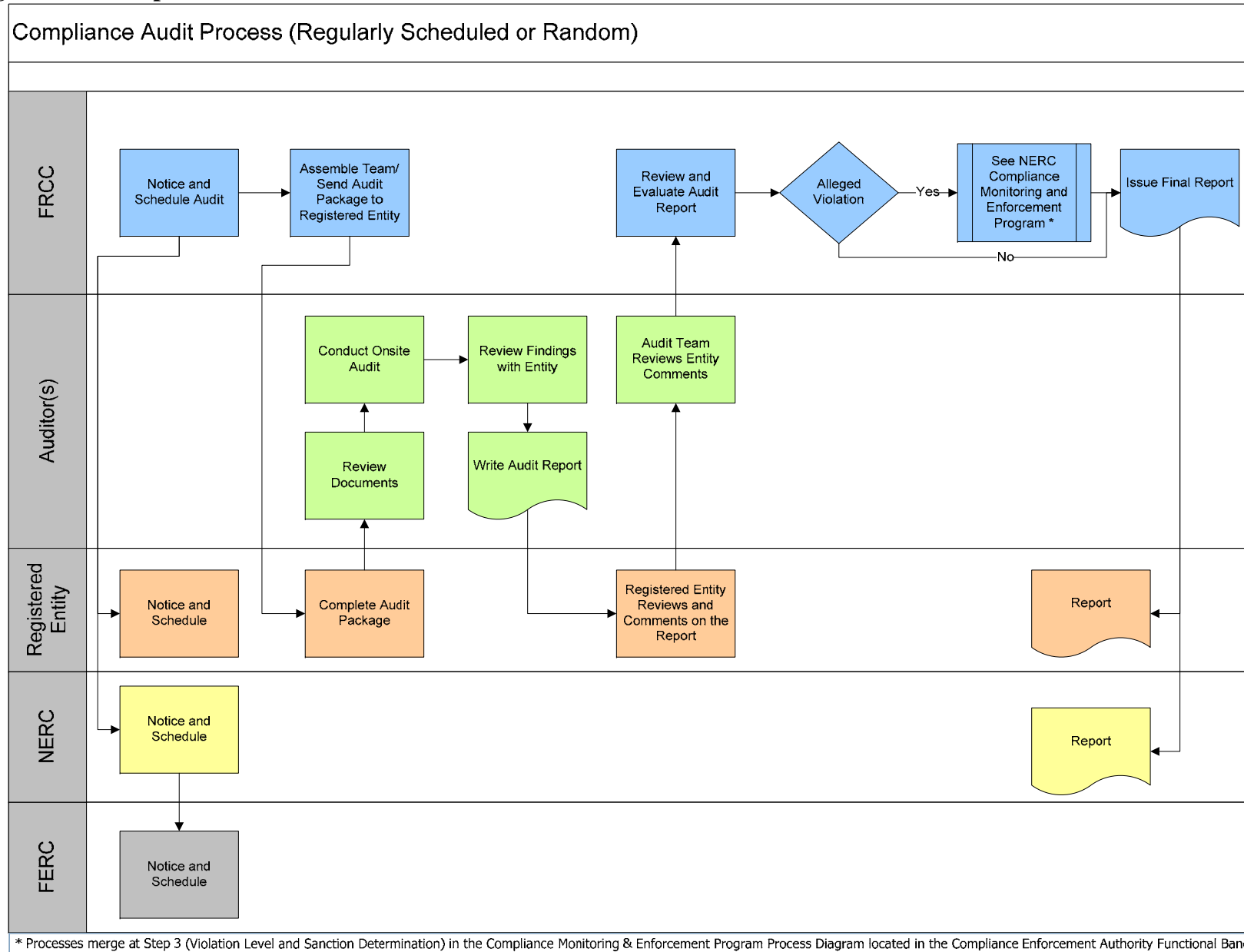
<sup>2</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

## Compliance Monitoring and Enforcement Program

- The FRCC reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- The FRCC provides the final audit report to the Registered Entity and to NERC.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

## Figure 3.1 – Compliance Audit Process



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 FRCC Annual Audit Plan and Schedule**

The FRCC shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the FRCC provides the Annual Audit Plans to FERC consistent with the agreements in place with FERC.

Prior to January 1 of the year covered by the Annual Audit Plan, the FRCC shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The FRCC will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

Revisions and additions to a FRCC Annual Audit Plan shall be approved by NERC and the Registered Entity shall be notified in a timely manner (normally sixty (60) days in advance) of changes or revisions to scheduled audit dates.

### **3.1.3 Frequency of Compliance Audits**

The FRCC will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the FRCC if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the FRCC or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated, the FRCC shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### **3.1.4 Scope of Compliance Audits**

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### **3.1.5 Conduct of Compliance Audits**

The audit team shall be comprised of staff personnel from the FRCC and may include contractors and industry volunteers as determined by the FRCC to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from the FRCC and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any FRCC Compliance Audit team either as an observer or as an audit team member as determined by the FRCC. Additionally, FERC and

## Compliance Monitoring and Enforcement Program

other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the FRCC is applicable.
- Successfully complete all NERC or NERC-approved FRCC auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the FRCC no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the FRCC within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the FRCC at least five (5) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit. The FRCC will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

### 3.1.6 Compliance Audit Reports

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the FRCC who will review the report and assess compliance with

## Compliance Monitoring and Enforcement Program

the Reliability Standards and provide the Registered Entity with a copy of the final report. The FRCC will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the FRCC in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or the FRCC until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the FRCC pursuant to the provisions of Section 5.0.

Information deemed by the FRCC or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### 3.2 Self-Certification

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

#### 3.2.1 Self-Certification Process Steps

The process steps for the Self- Certification process are as follows and as shown in **Figure 3.2.1**.<sup>3</sup>

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<sup>3</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the FRCC's receipt of data.

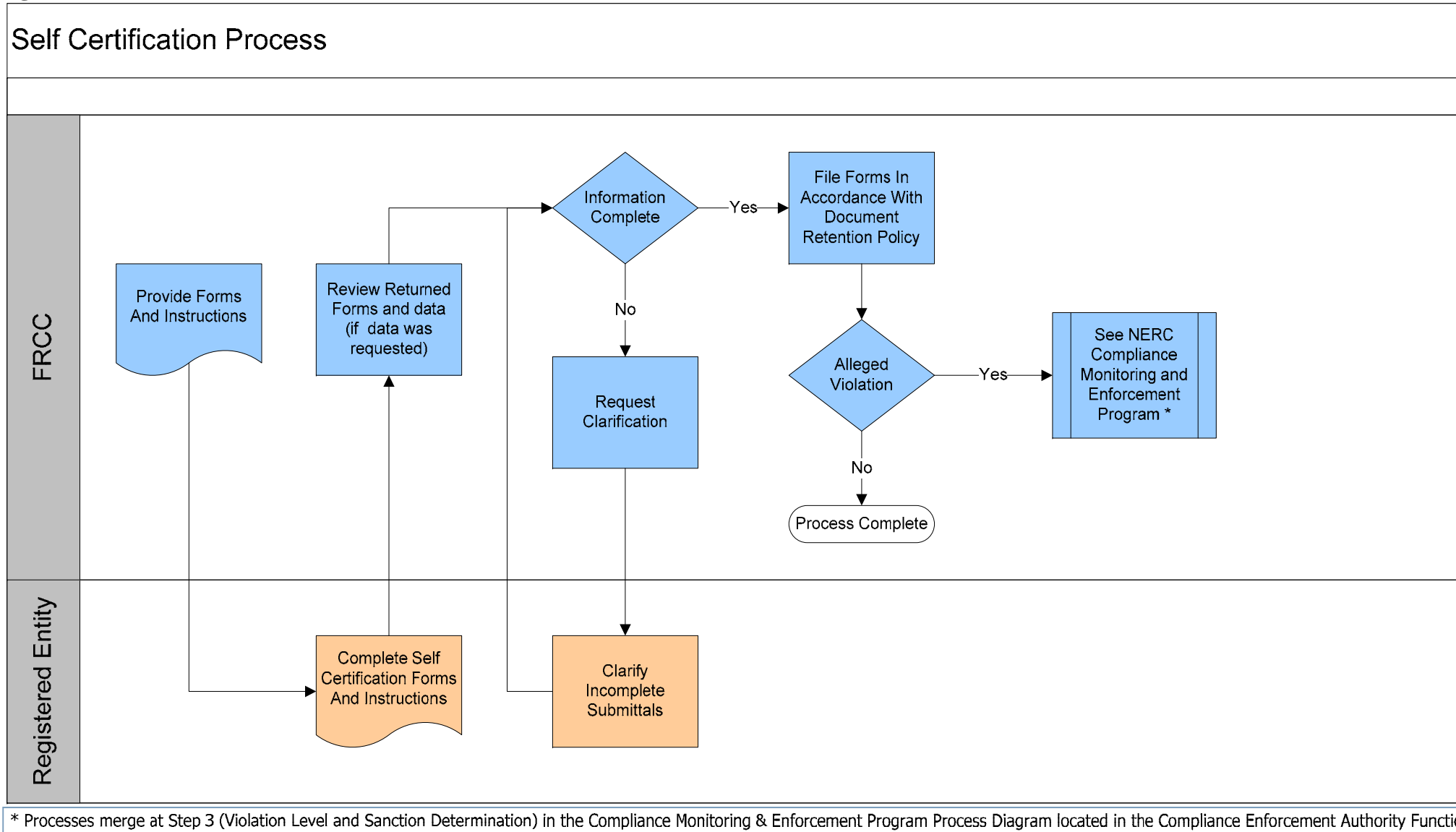
## Compliance Monitoring and Enforcement Program

- The FRCC posts and updates the reporting schedule and informs Registered Entities. The FRCC ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The FRCC requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the FRCC.
- The FRCC reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The FRCC completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.



## Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by the FRCC. Spot Checking may be initiated by the FRCC at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The FRCC then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by the FRCC as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>4</sup>

- The FRCC notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the FRCC will allow at least twenty (20) days for the information to be submitted or available for review.
- The FRCC, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by the FRCC is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the FRCC in the format specified in the request.
- The FRCC reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- The FRCC reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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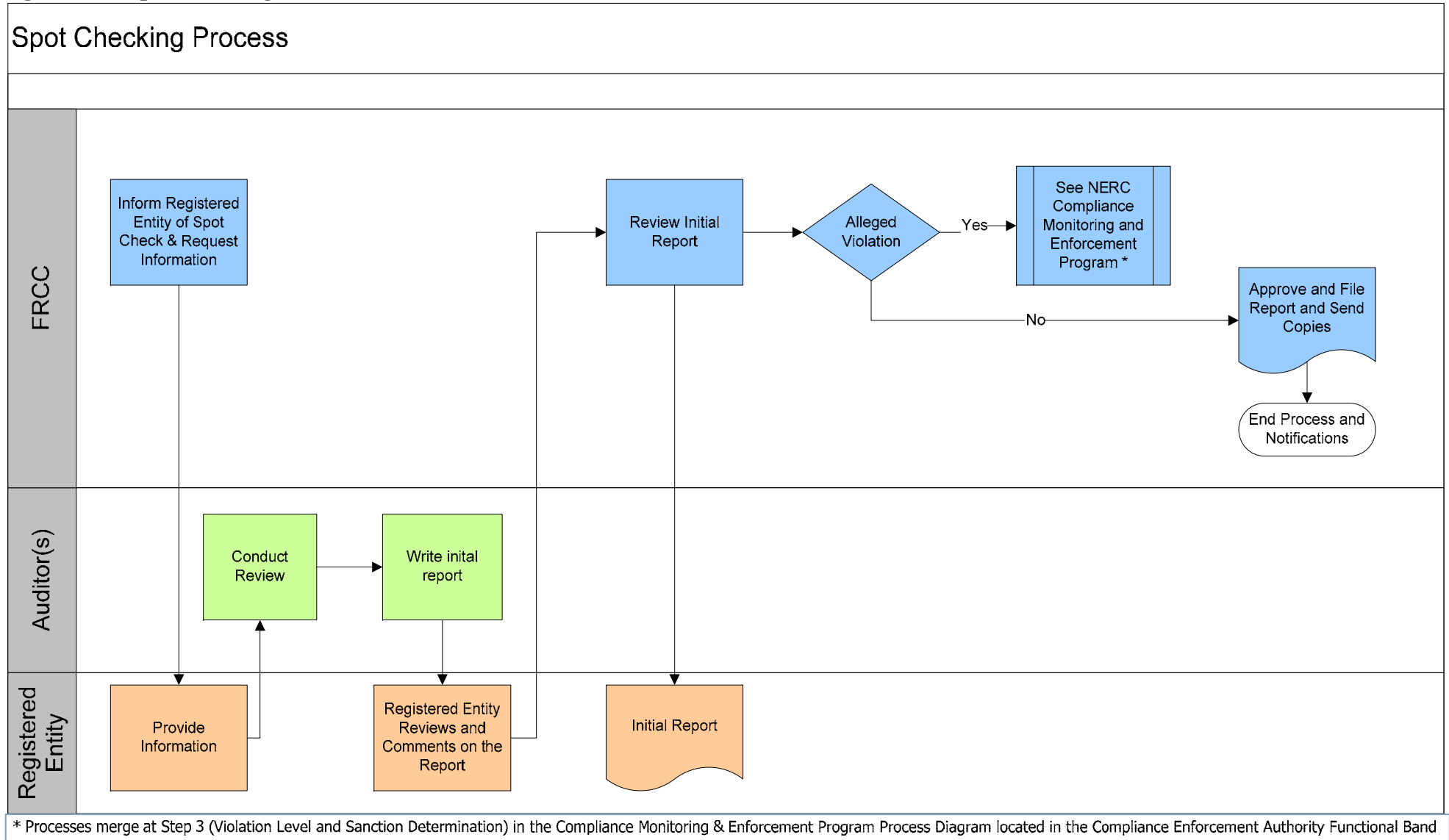
<sup>4</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the FRCC's receipt of data.

## Compliance Monitoring and Enforcement Program

- The FRCC completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by the FRCC, ~~or~~ or NERC, ~~or~~ or FERC in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by the FRCC's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>5</sup> The FRCC shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation ~~Compliance Violation Investigation~~ of a U.S.-related matter, NERC shall provide notice to FERC of the investigation ~~Compliance Violation Investigation~~ prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an investigation ~~Compliance Violation Investigation~~ of a non-U.S.-related matter, NERC shall provide notice of the investigation ~~Compliance Violation Investigation~~ to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the investigation ~~Compliance Violation Investigation~~ prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the investigation ~~Compliance Violation Investigation~~ to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

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<sup>5</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Violation ~~Investigations~~ into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the FRCC or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the FRCC determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:<sup>6</sup>

- The FRCC is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the FRCC: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While the FRCC may, at its discretion, notify the Registered Entity of the reasons for its [Compliance Violation Investigation](#), the [Compliance Violation Investigation](#), as it unfolds, need not be limited to this scope.
- NERC assigns a NERC staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations place by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- The FRCC requests data or documentation and provides a list of individuals on the [Compliance Violation Investigation](#) team and their recent employment history. The Registered Entity may object to any individual on the [Compliance Violation Investigation](#) team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff on the [Compliance Violation Investigation](#) team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to an [Compliance Violation Investigation](#) may object to any member of the [Compliance Violation Investigation](#) team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the

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<sup>6</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

team member's impartial performance of his or her duties. Such objections must be provided in writing to the FRCC within such ten (10) business day period. The FRCC will make a final determination as to whether the individual will participate in the [Compliance Violation Investigation](#) of the Registered Entity.

- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the FRCC in the format as specified in the request.
- The FRCC reviews information to determine compliance with the Reliability Standards. The FRCC may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The FRCC may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the FRCC's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The FRCC completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.
- If the FRCC determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the [Compliance Violation Investigation](#) has been completed. NERC will in turn notify FERC and, if the [Compliance Violation Investigation](#) pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public

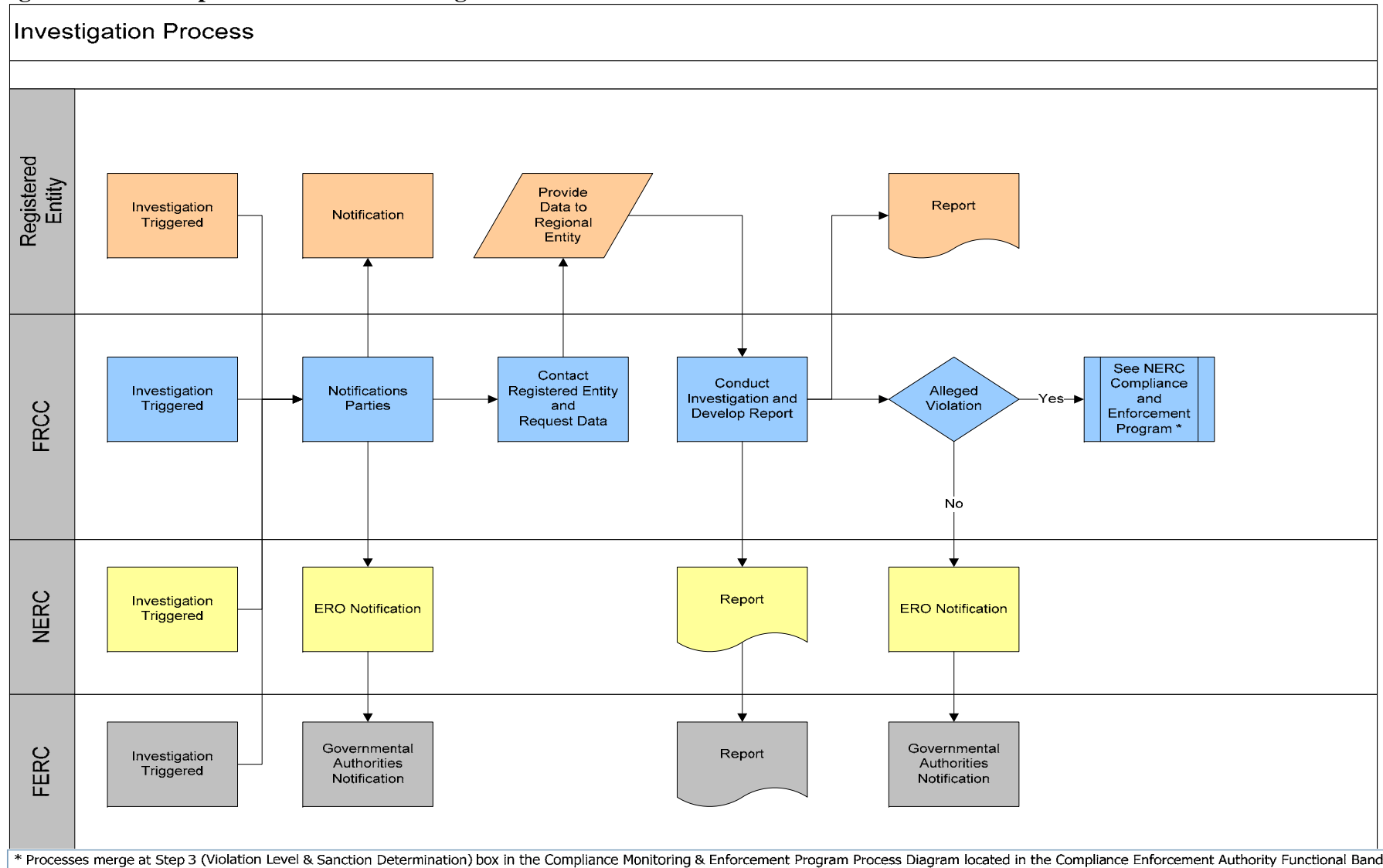
## Compliance Monitoring and Enforcement Program

information pertains and subject to any limitation placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction..



# Compliance Monitoring and Enforcement Program

**Figure 3.4.1 – Compliance Violation Investigation Process**



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>7</sup>

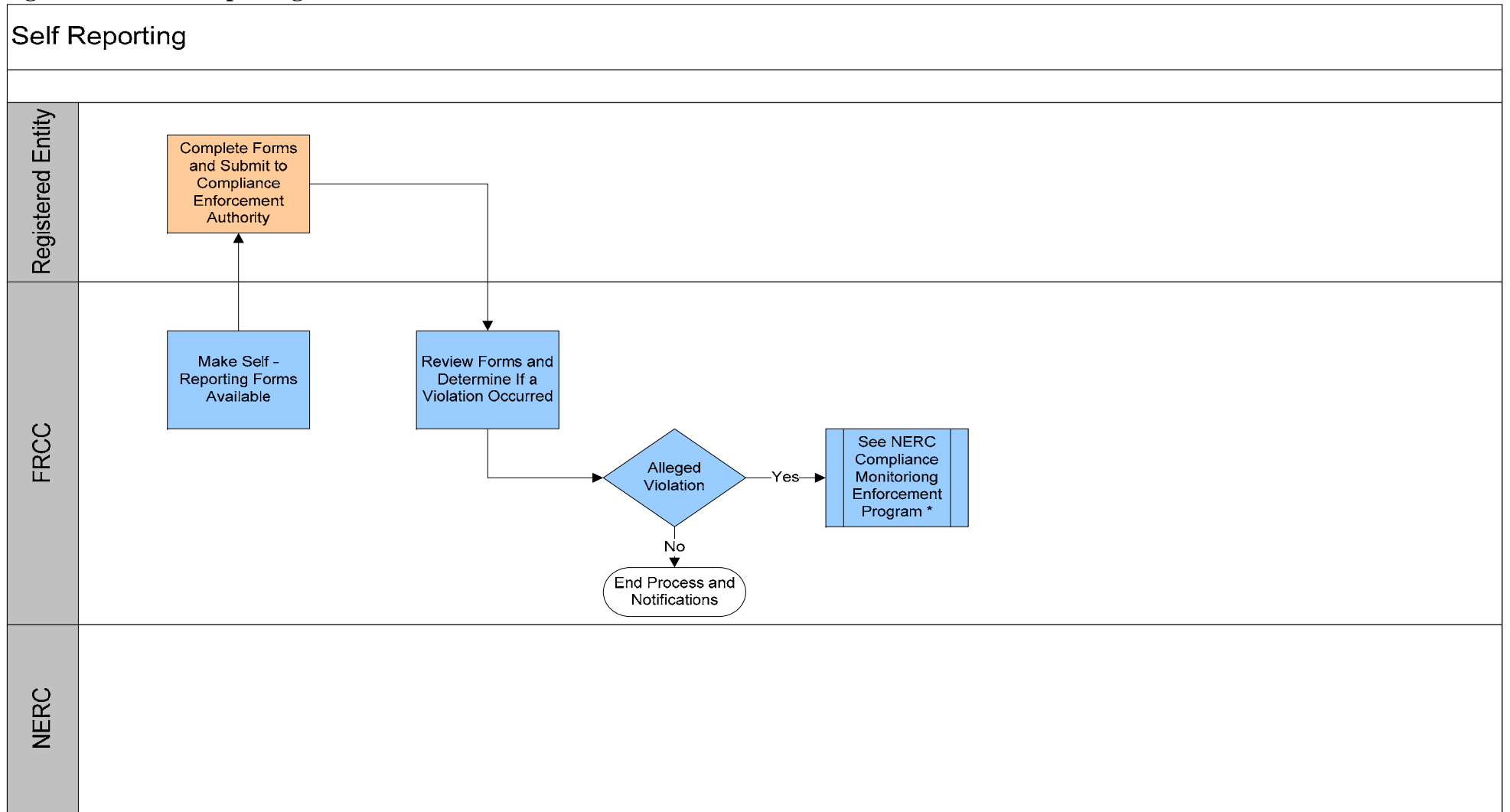
- The FRCC posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the FRCC.
- The FRCC reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The FRCC completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>This process normally completes within sixty (60) days following the FRCC's receipt of data.  
Revised for ~~July 21, 2008~~[February 17, 2009](#) Compliance Filing

# Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

The FRCC requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the FRCC, or on an as-needed basis. Requests for data submittals will be issued by the FRCC to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>8</sup>

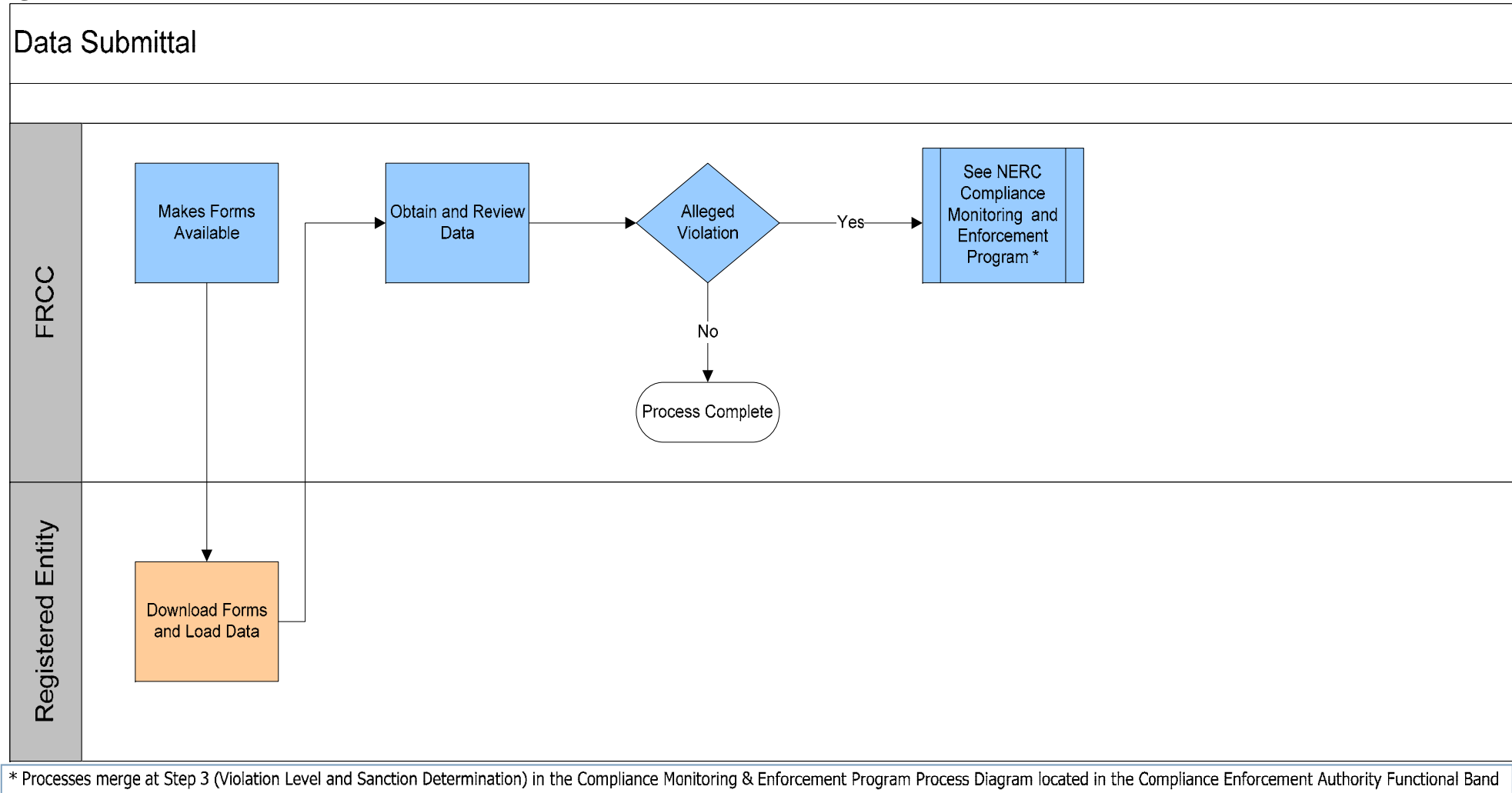
- The FRCC posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The FRCC ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its web site.
- The FRCC makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the FRCC in the format as specified in the request.
- The FRCC reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- The FRCC reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- The FRCC completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the FRCC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- The FRCC will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>8</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the FRCC's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The FRCC shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The FRCC shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or the FRCC may receive Complaints alleging violations of a Reliability Standard. The FRCC will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to the FRCC or its affiliates, divisions, committees or subordinate structures, (2) where the FRCC determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the FRCC, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The FRCC will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the FRCC determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>9</sup>

- The complainant notifies NERC or the FRCC using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and the FRCC web sites. The Complaint should include sufficient information to enable NERC or the FRCC to make an assessment of whether the initiation of a Compliance Violation Investigation is

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<sup>9</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

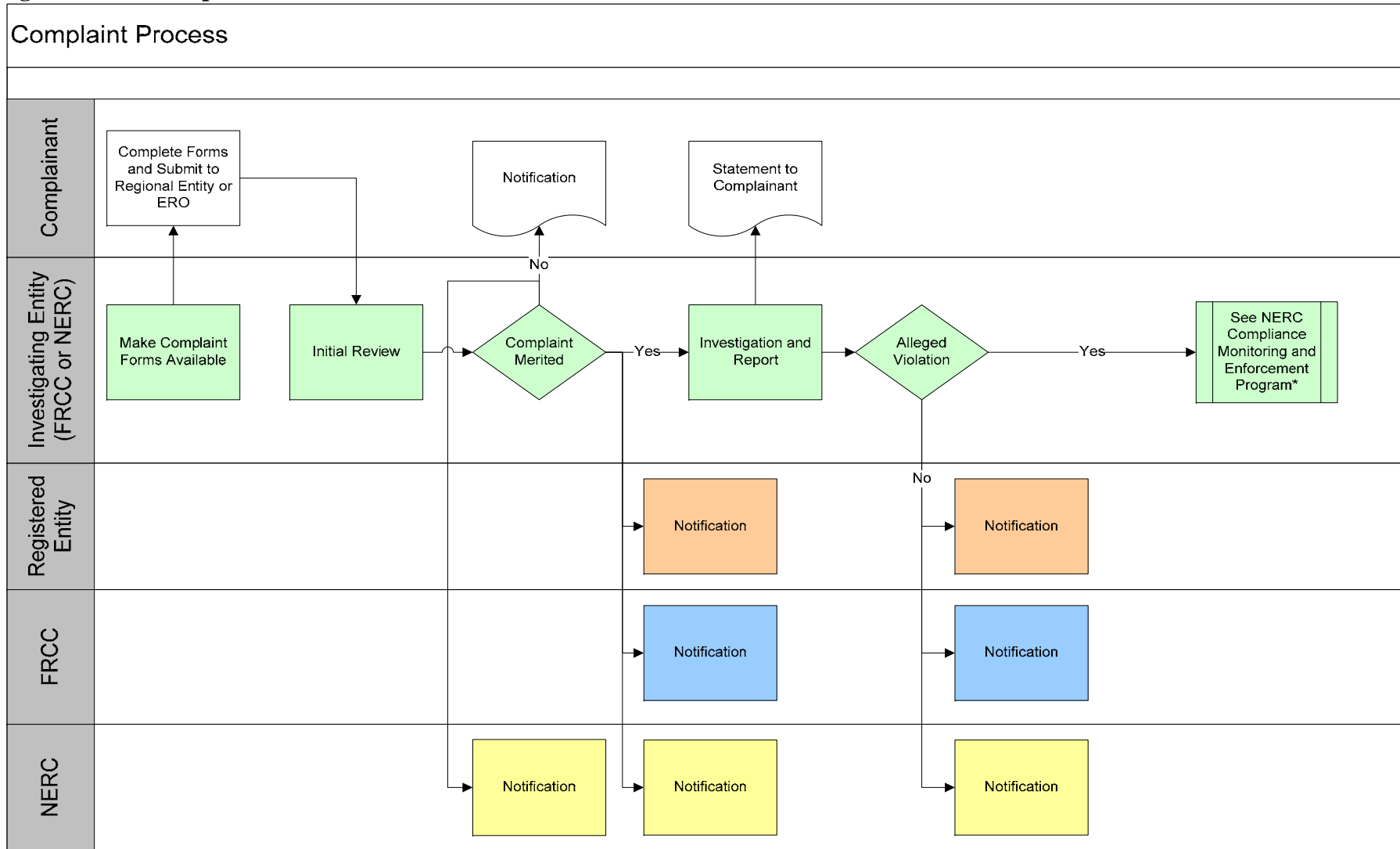
## Compliance Monitoring and Enforcement Program

warranted. NERC or the FRCC may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the FRCC determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The FRCC notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the FRCC determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The FRCC fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band



## Compliance Monitoring and Enforcement Program

### 3.8.2 Anonymous Complainant Notification Procedure

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>10</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by the FRCC will either be directed to NERC or the FRCC will collect and forward the information to NERC, at the FRCC's discretion. Neither NERC nor the FRCC shall disclose the identity of any person or entity reporting possible violations to NERC or to a FRCC that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where the FRCC collects the information, by NERC and the FRCC. If the FRCC determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## 4.0 ANNUAL IMPLEMENTATION PLANS

### 4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the FRCC by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the FRCC to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### 4.2 FRCC Implementation Plan

By November 1 of each year, the FRCC will submit a FRCC Implementation Plan for the following calendar year to NERC for approval. The FRCC Implementation Plan and the FRCC's other relevant Compliance Program documents shall be posted on the FRCC's Web site.

## 5.0 ENFORCEMENT ACTIONS

The FRCC shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the FRCC's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and the FRCC shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the FRCC.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process

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<sup>10</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

If the FRCC alleges that a Registered Entity has violated a Reliability Standard, the FRCC shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The FRCC may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the FRCC believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the FRCC to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the FRCC will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;
- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the shortened procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedure**, and

## Compliance Monitoring and Enforcement Program

(viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from the FRCC, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the notice of the penalty or sanction or other enforcement action will then be processed and issued to the Registered Entity.

### 5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the FRCC's determination of violation and sanction (if applicable), in which case the FRCC shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the FRCC a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The FRCC shall schedule a conference with a FRCC Board Compliance Committee (BCC) appointed Compliance Advisory Panel (CAP) and the Registered Entity within ten (10) business days after receipt of the response. No person who is employed by, or has a financial or other interest in the registered entity contesting the alleged violation, or any of its affiliates, may participate as a member of the CAP. The CAP will include at least one member of the FRCC Compliance Staff and all CAP discussions will be conducted confidentially. If the FRCC and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made within ten (10) business days, the violation will become a Confirmed Violation when filed by NERC with FERC.

If a hearing is requested the FRCC shall initiate the hearing process by convening the FRCC BCC and issuing a written notice of hearing to the Registered Entity and the FRCC BCC and identifying the FRCC's designated hearing representative.<sup>11</sup>

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<sup>11</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the FRCC, the Registered Entity may file a request for hearing with the FRCC.

## Compliance Monitoring and Enforcement Program

### 5.3 Hearing Procedure for Compliance Hearings

The FRCC hearing procedure is set forth in **Attachment 2**.

### 5.4 Settlement Process

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the FRCC shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

The FRCC will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The FRCC 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 the FRCC and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the FRCC will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement. The FRCC will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

## Compliance Monitoring and Enforcement Program

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:<sup>12</sup>

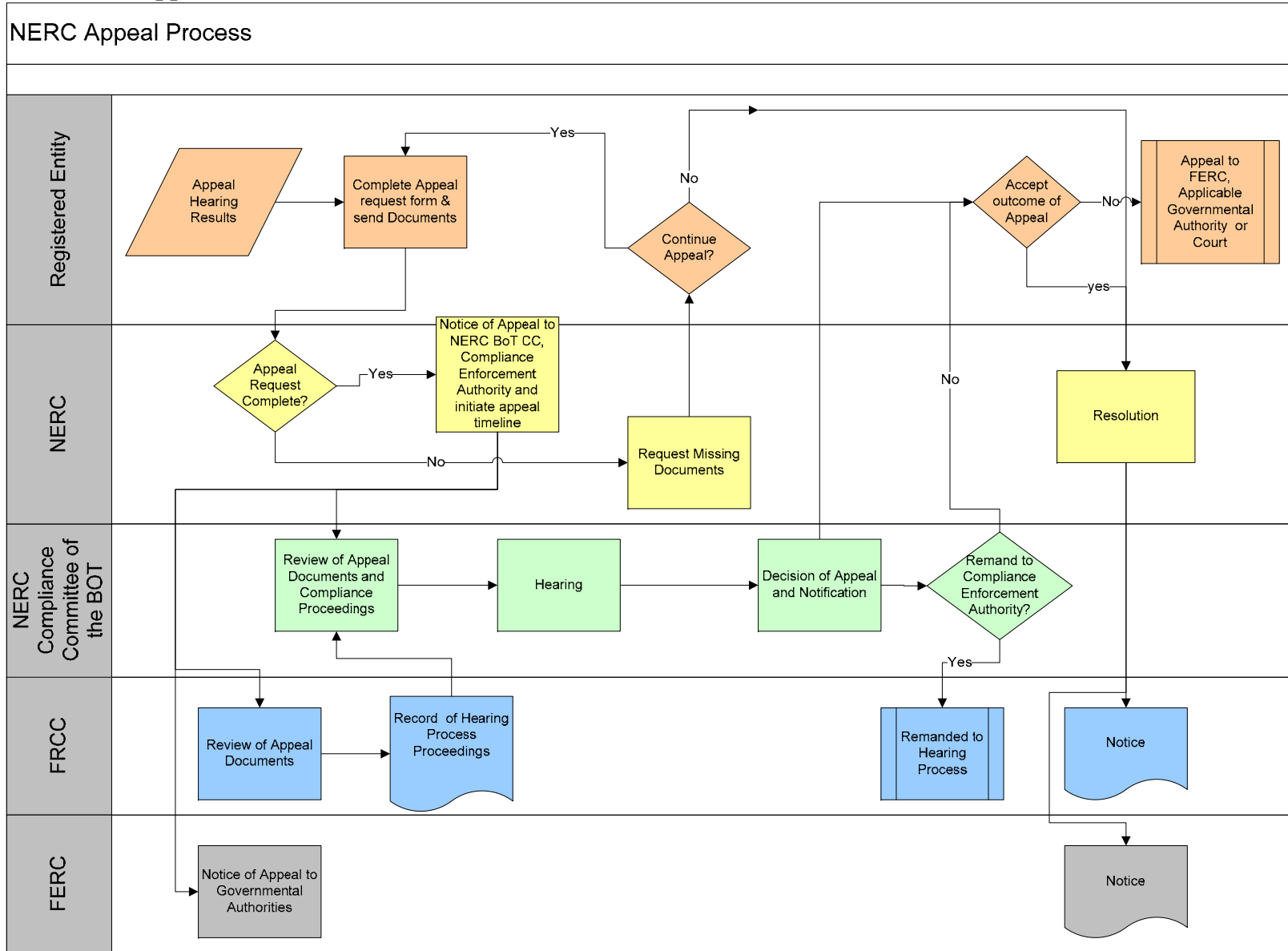
On appeal, NERC shall either affirm the FRCC decision or remand to the FRCC with reasons for its remand, which may include a direction to the FRCC to revise the decision. If NERC directs the FRCC to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of the FRCC whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

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<sup>12</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty**

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the FRCC to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the FRCC, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

Any penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

### **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

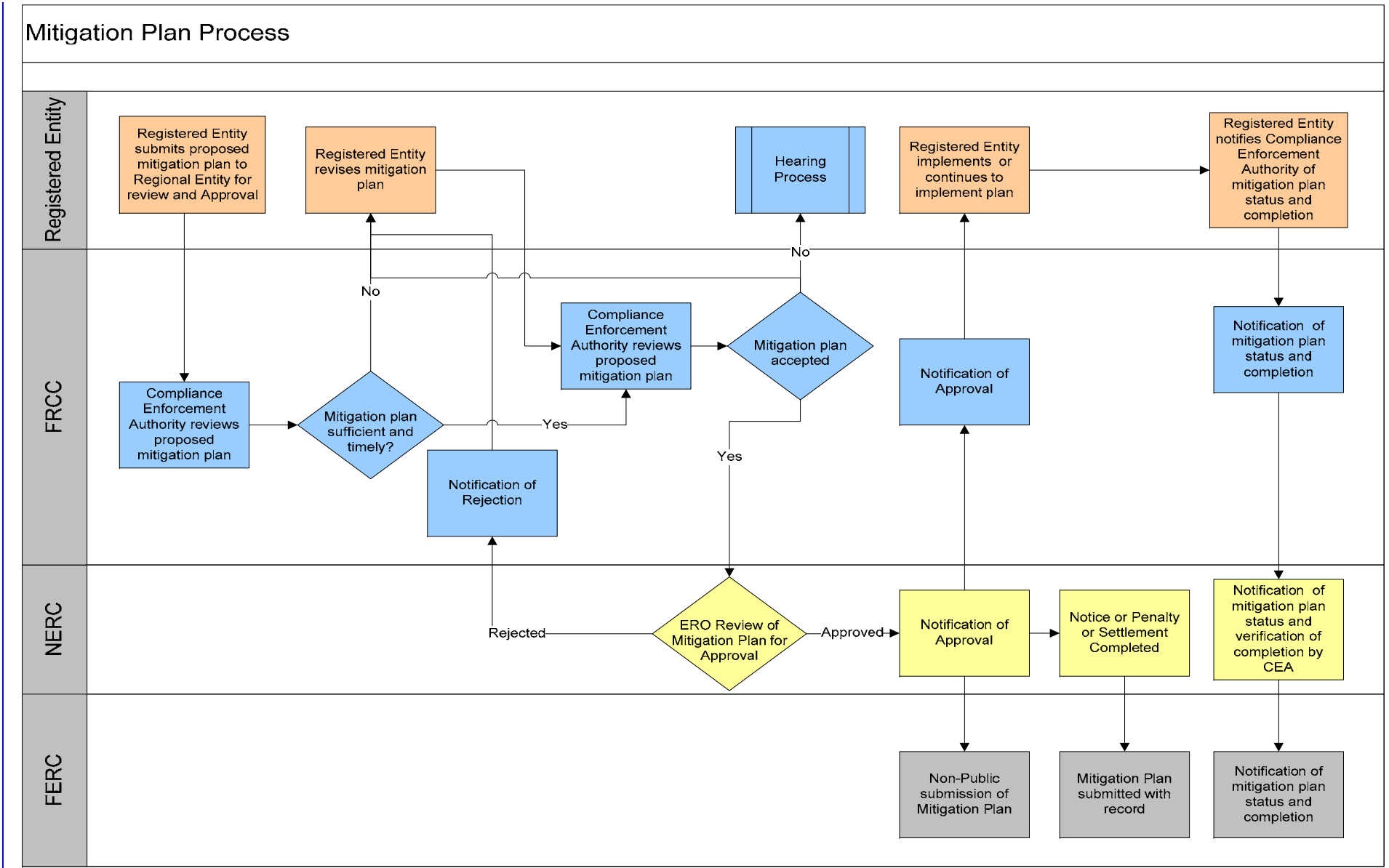
#### **6.1 Requirement for Submission of Mitigation Plans**

A Registered Entity found to be in violation of a Reliability Standard shall file with the FRCC (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process





## Compliance Monitoring and Enforcement Program

### 6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### 6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The FRCC will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the FRCC's discretion, the completion deadline may be extended for good cause including: (i) short assessment periods (i.e., event driven or monthly assessments), and (ii)

## **Compliance Monitoring and Enforcement Program**

construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the FRCC with associated sanctions or penalties. The FRCC will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the FRCC will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. The FRCC will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the FRCC at least five (5) business days before the original milestone or completion date. The FRCC may accept a request for an extension or modification of a Mitigation Plan if the FRCC determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the FRCC or the FRCC BCC in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### **6.4 Submission of Mitigation Plans**

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the FRCC BCC's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the FRCC or the FRCC BCC in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the FRCC before the FRCC BCC renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

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### 6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless extended by the FRCC, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the FRCC shall, within the initial or extended review period, notify the Registered Entity that the review period is being extended and identify the date by which the FRCC will complete its review of the Mitigation Plan. The FRCC's extension notice shall also state that if the FRCC has not issued a notice by the end of the extended review period either stating that the FRCC accepts or rejects the proposed Mitigation Plan or further extending the FRCC's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the FRCC rejects a Mitigation Plan, the FRCC will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The FRCC will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the FRCC will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedure, by submitting to the FRCC a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the FRCC will issue a written statement accepting a Mitigation Plan it deems as appropriate.

The FRCC will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the FRCC, will notify the FRCC and, which will in turn notify the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the FRCC, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall may subsequently publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part of the public posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard in accordance with Section 5.4.

## Compliance Monitoring and Enforcement Program

### 6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to the FRCC on the progress of the Mitigation Plan. The FRCC will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the FRCC certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the FRCC to verify completion. The FRCC shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the FRCC. In addition, the FRCC may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

The FRCC will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### 6.7 Recordkeeping

The FRCC will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

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### 7.0 REMEDIAL ACTION DIRECTIVES

The FRCC may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The FRCC will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the FRCC shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. The FRCC will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. The FRCC will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The FRCC will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once the FRCC has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the FRCC within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the

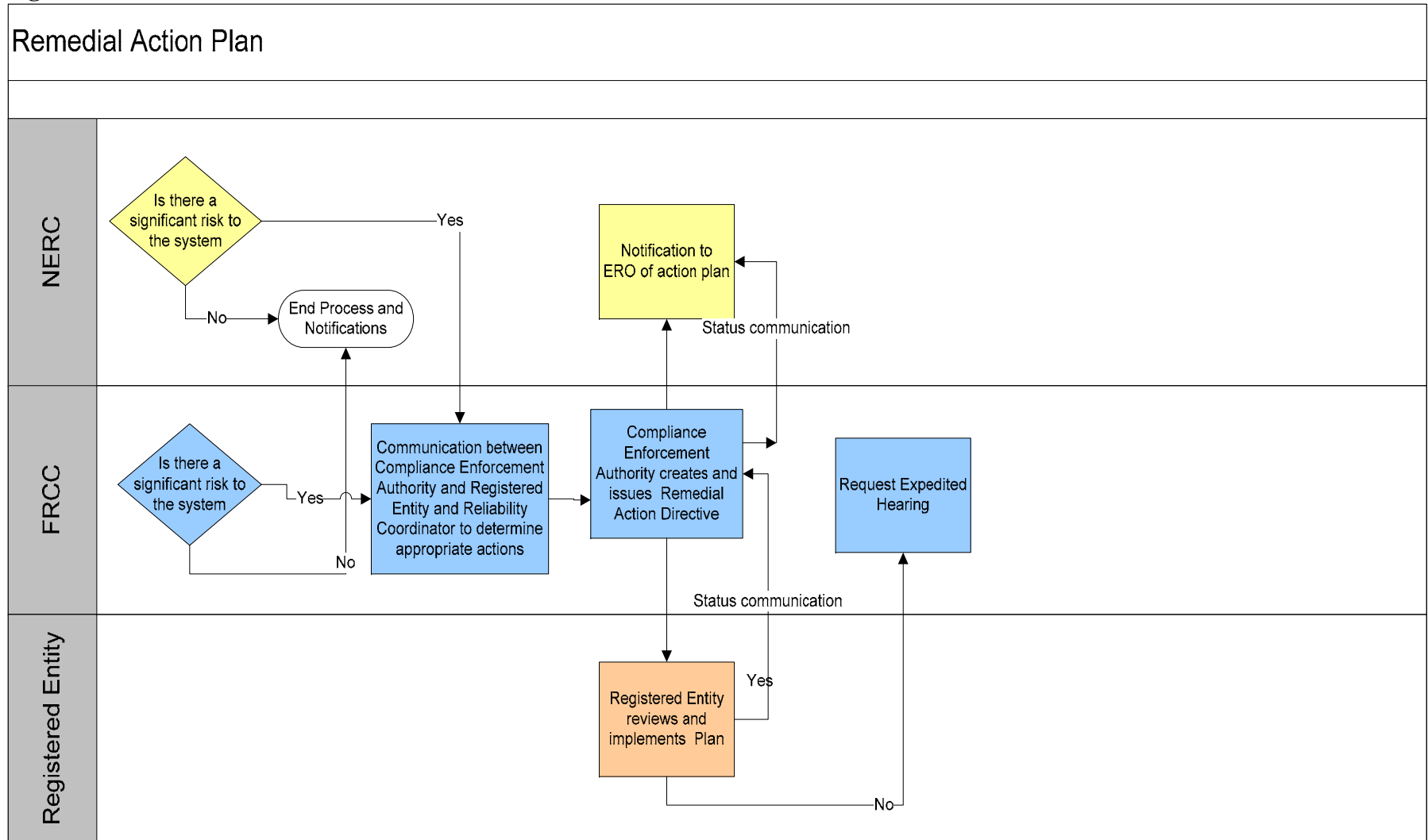
## Compliance Monitoring and Enforcement Program

hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.

# Compliance Monitoring and Enforcement Program

**Figure 7.0 – Remedial Action Process**



## Compliance Monitoring and Enforcement Program

### 8.0 REPORTING AND DISCLOSURE

The FRCC shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

The FRCC shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the FRCC through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the FRCC shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority, within two (2) business days of receiving such a report from the FRCC; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a FRCC staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

The FRCC shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. The FRCC will ensure the information is current when these reports are provided.

The FRCC shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, the FRCC will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The



## **Compliance Monitoring and Enforcement Program**

Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the FRCC to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

The FRCC records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

The FRCC records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

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Upon request from NERC, the FRCC will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the Compliance Program. In providing the information and data to NERC, the FRCC shall preserve any mark of confidentiality.

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

The FRCC personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

The FRCC will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

# **Compliance Monitoring and Enforcement Program**

## **ATTACHMENT 1**

### **PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA**

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the FRCC may sequentially execute the following steps for each Reliability Standard for which the FRCC has requested data, information, or other reports. The FRCC however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

**Step 1:**                            **The FRCC will issue a follow-up notification to the Registered Entity’s designated contact.**

**Step 2:**                            **The FRCC will issue a follow-up notification to the Registered Entity’s vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity’s designated contact).**

**Step 3:**                            **The FRCC will issue a follow-up notification to the Registered Entity’s chief executive officer or equivalent (with a copy to NERC, the Registered Entity’s vice president or equivalent responsible for compliance and the Registered Entity’s designated contact).**

**A full Compliance Audit may be scheduled at this step.**

**Step 4:**                            **Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.**

**Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.**

# Compliance Monitoring and Enforcement Program

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# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

The provisions set forth in this Attachment 2 (“Hearing Procedures”) shall apply to and govern practice and procedure before the FRCC in hearings in the United States conducted into (i) whether Registered Entities within the FRCC’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before the FRCC Board Compliance Committee (BCC)<sup>1</sup> established by the FRCC. The composition of the BCC, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the BCC on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.

#### 1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the BCC, for good cause shown, either upon the Hearing Officer’s or the BCC’s own motion or upon the motion of any Participant.

#### 1.1.3 Standards for Discretion

The FRCC’s discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in FRCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present

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<sup>1</sup> See Exhibit D of the Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council for a description of the FRCC BCC.

## Compliance Monitoring and Enforcement Program

explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.

- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the FRCC's conflict of interest policy.
- e) Impartiality - Persons appearing before the BCC should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### 1.1.4 Interpretation

These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.

Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.

To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

### 1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC and FRCC Compliance Monitoring and Enforcement Programs shall apply, and (ii) the following terms shall have the following meanings:

“Bulk-Power System,” for the purposes of these Hearing Procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk,” as designated by the FRCC.

“FRCC’s area of responsibility” means the FRCC’s corporate region. The FRCC’s area of responsibility is shown in Exhibit A to the delegation agreement between the FRCC and NERC.

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“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

“Manager of Compliance” means the Manager of Compliance of the FRCC, who is responsible for the management and supervision of Compliance Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means an individual employed or contracted by the FRCC and designated by the FRCC to preside over hearings conducted pursuant to these Hearing Procedures.

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *ERO Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s violation and take into consideration any timely efforts made by the Registered Entity to remedy the violation.



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“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable.

“Staff” or “Compliance Staff” means individuals employed or contracted by the FRCC who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies the FRCC’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the BCC.

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

#### **1.2.1 Contents of Filings**

All filings made with BCC must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other documents; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

#### **1.2.2 Form of Filings**

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on

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one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.

- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

#### **Where to File**

Filings shall be made with the Clerk of the FRCC located at its principal office. The office will be open from 8:00 am – 5:00 pm local time each day except Saturday, Sunday, legal holidays and any other day declared by the FRCC.

#### **When to File**

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the BCC. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than 5:00 pm local time on the date specified.

#### **How to File**

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system by the FRCC.

#### **Number of Copies to File**

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the BCC with a copy of each filing.

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### **Signature**

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

### **Verification**

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the BCC. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.

### **Certificate of Service**

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

#### **1.2.4 Service**

##### **Service List**

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Manager of Compliance and the Registered Entity's designated agent for service [as registered with the FRCC] shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

##### **By Participants**

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

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### **By the Clerk**

The Clerk shall serve all issuances of the Hearing Officer and BCC upon the members of the BCC and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Clerk shall transmit a copy of the record of a proceeding to NERC at the time it serves the NERC with either (1) a notice of penalty, or (2) a BCC final order that includes a notice of penalty.

### **Effective Date of Service**

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service of a document upon the Participant, four (4) business days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

**1.2.5** (Section left intentionally blank)

### **1.2.6 Extensions of Time**

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or BCC for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or BCC may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

### **1.2.7 Amendments**

Amendments to any documents filed in a proceeding may be allowed by the Hearing Officer or the BCC upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

### **1.2.8 Transcripts**

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

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what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

The FRCC will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

### **1.2.9 Rulings, Notices, Orders and Other Issuances**

Any action taken by the Hearing Officer or the BCC shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the BCC. All notices of hearings shall set forth the date, time and place of hearing.

### **1.2.10 Location of Hearings and Conferences**

All hearings and oral arguments shall be held at the principal office of the FRCC unless the Hearing Officer or BCC designates a different location.

### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the BCC, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

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

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

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

No hearing, oral argument or meeting of the BCC shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or BCC, or any transcript, made in any proceeding shall be publicly released unless NERC (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the BCC, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation. Unless NERC provides a different

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docketing system that will be used uniformly by the FRCC, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[FRCC]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the FRCC, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, BCC members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

## **1.3 Initiation of the Hearing Process**

### **1.3.1 Registered Entity’s Option to Request a Hearing**

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these Hearing Procedures, a Registered Entity may file a statement with the FRCC requesting a hearing if either:

- a) The Registered Entity files a response to a notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or
- b) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan.

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity’s proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened

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hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent) requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) business days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- a) The Registered Entity's Self-Reporting of a violation;
- b) The notice of Alleged Violation and the Registered Entity's response thereto; and/or
- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

### 1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) business days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) business days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.

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- c) Within twenty-one (21) days after the prehearing conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) business days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:
  - 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) business days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) business days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Paragraph 1.7.5 and within seven (7) business days thereafter, a reply brief designated "Brief in Reply to Exceptions."
- h) The BCC shall strive, but is not required, to issue a final order within ninety (90) days of the notice of hearing.



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

### **1.4 General Hearing Procedure**

#### **1.4.1 Notice of Hearing**

Within seven (7) business days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) business days after the notice of hearing is issued.

#### **1.4.2 Hearing Officer**

The FRCC may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the BCC as set forth in Paragraph 1.4.3. Members of the BCC may attend any aspect of the hearing.

The BCC may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for submission of the matter to the BCC for final decision through the presentation to the BCC of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- 3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise [and issue orders concerning](#) discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;

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- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;
- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue protective orders pursuant to Paragraph 1.5.9;
- 11) To issue initial opinions; and
- 12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 FRCC Board Compliance Committee**

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

- 1) The BCC shall receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written comments, testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.
- 2) The BCC or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The BCC shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the BCC shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- 4) To the extent that the BCC disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review

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meeting the requirements of Paragraph 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.

- 5) The BCC shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the BCC shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

### 1.4.4 Interlocutory Review

A Participant shall be allowed to seek interlocutory review by the BCC of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the BCC, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) business days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) business days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the BCC within fourteen (14) business days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the BCC.

On review of a Hearing Officer's ruling, the BCC may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The BCC may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the BCC, and (ii) majority vote of the members of the BCC voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the BCC'S action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the BCC based on a finding of exceptional circumstances.

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A non-Participant that has been ordered by the Hearing Officer pursuant to paragraph 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the BCC of the Hearing Officer's order with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to paragraph 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide document, information or testimony.

### 1.4.5 Disqualification

A Hearing Officer, Technical Advisor or member of the BCC shall recuse himself or herself from a proceeding if participation would violate the FRCC's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the BCC from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

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

### 1.4.6 Technical Advisor

The Hearing Officer and/or the BCC may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not be a

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member of Staff participating in the proceeding on which such technical advice would be rendered.

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

### 1.4.7 No Ex Parte Communications

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the BCC, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
  - 2) the BCC, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;
    - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the BCC, the Hearing Officer and any Technical Advisor.
- d) Any member of the BCC, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) business days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

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### **1.4.8 Appearances**

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

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

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

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

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

### **1.4.10 Consolidation of Proceedings**

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

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

## **1.5 Prehearing Procedure**

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### 1.5.1 ~~Waiver of Time Limits~~ [\[Intentionally left blank\]](#)

[\[Intentionally left blank\]](#)

### 1.5.2 Prehearing Conference

The purpose of the prehearing conference shall be to:

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

### 1.5.3 Summary Disposition

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

### 1.5.4 Status Hearings

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

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### 1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) business days after service of the motion, and replies to responses shall be filed within seven (7) business days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

### 1.5.6 Experts

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

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

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

(1) ~~Unless otherwise provided by order of the Hearing Officer or BCC, w~~Within five (5) business days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:

(A) requests for information to the Respondent;

(B) every written request, including e-mail, directed to persons not employed by the FRCC to provide information or documents or to be interviewed;

(C) the documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;

(E) all other documents obtained from the Respondent; and

(F) all other documents obtained from persons not employed by the FRCC.



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The sole bases pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7(b); provided ~~H~~however, that the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or BCC shall oversee the Staff's designation of documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary.

(3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent not later than fourteen (14) business days after Staff receives such documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional documents available to the Respondent not less than ten (10) business days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

(4) Nothing in subparagraph (a)(1) shall limit the discretion of the FRCC to make any other document available to the Respondent or the authority of the Hearing Officer to order the production of any other documents or information by any Participant.

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

(1) Staff may withhold a document from inspection and copying by the Respondent if:

(A) the document is privileged to Staff or constitutes attorney work product of Staff's counsel (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);

(B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of the FRCC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an

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examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the FRCC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

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

(2) Nothing in Subparagraph (b)(1)(B), (C) or (D) authorizes Staff to withhold a document, or a part thereof, that contains exculpatory evidence. Nothing in Subparagraph (b)(1) requires Staff to withhold a document from disclosure.

### **(c) Withheld Document List**

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). ~~A list of withheld documents shall also be provided by any other Participant required to produce documents, at the time the documents are required to be produced.~~ Upon review, the Hearing Officer may order Staff to make ~~the list or~~ any document withheld available to the Respondent(s) for inspection and copying.

### **(d) Timing of Inspection and Copying**

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

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

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

### **(f) Copying Costs**

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

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### (g) Failure to Make Documents Available — Harmless Error

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

### 1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through ~~409~~~~408~~ of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408~~9~~, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, ~~and~~ requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing. Unless otherwise directed by the Hearing Officer or BCC upon motion by a Participant or by the Hearing Officer, or by the BCC on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through ~~408 and~~ 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through ~~385.408 and~~ 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (a) The provisions of Subparagraphs ~~(b) through (g)~~(d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the BCC ~~do not~~ have the authority to issue ~~subpoenas to, or otherwise~~ orders ~~to or~~ compel the appearance by or production of documents or information by, only any Person or entity that (i) is not a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the BCC do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony.

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- (d) References to “subpoena” in Rules 404, 409, 410 and 501(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony.
- (e) References to the “Commission” in Rules 402 through ~~408 and~~ 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), ~~and~~ the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the BCC, ~~and~~ (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or BCC.
- (f) Unless otherwise ordered by the Hearing Officer or BCC, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, ~~or~~ request for admissions, or order to produce or provide documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- (g) A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying.
- (h) In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the BCC shall determine whether the failure to make the document available was harmless error.
- (i) Unless otherwise ordered by the Hearing Officer or BCC, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- (j) Notwithstanding ~~(ef)~~ and ~~(if)~~, however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are

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

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### 1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Paragraph 1.6.16, and (ii) the testimony and documents of a non-Participant provided pursuant to an order to produce or provide documents, information or testimony, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce documents), the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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

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

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

### 1.5.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as NERC (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any FRCC, NERC or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).
- c) A ~~Participant submitting a~~ motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
- e) The protective order shall identify the data, documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.

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- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

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

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

## **1.6 Evidentiary Hearing Procedure**

### **1.6.1 Evidentiary Hearings**

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

### **1.6.2 Order of Receiving Evidence**

In all proceedings Compliance Staff shall open and close.

### **1.6.3 Opening and Closing Statements**

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the BCC. Any Participant's request for such statements, or a Hearing Officer or BCC notice requiring such statements, shall be made at least ten (10) business days in advance of the start of the evidentiary hearing.

### **1.6.4 Right of Participant to Present Evidence**

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such

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evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### 1.6.5 Exhibits

All material offered in evidence, ~~unless except oral testimony allowed by~~ the Hearing Officer ~~allows oral testimony or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony,~~ shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### 1.6.6 Witness Attendance at Evidentiary Hearing

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the BCC have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### 1.6.7 Admission of Evidence

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the BCC, in accordance with



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Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the FRCC's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

### **1.6.8 Evidence that is Part of a Book, Paper or Document**

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.6.9 Stipulations**

The Participants may stipulate to any relevant fact or the authenticity of any relevant document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### **1.6.10 Official Notice**

Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the FRCC.
- 3) State, provincial and federal statutes and municipal and local ordinances.

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- 4) The decisions of state, provincial and federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of the FRCC.
- 6) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.6.11 Admissibility of Evidence**

Any evidence offered, including that included in a book, paper or document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### **1.6.12 Offer of Proof**

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

### **1.6.13 Reservation of Evidentiary Ruling**

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

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### **1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the BCC may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the BCC seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the BCC. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the BCC. If a member of the BCC seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) business days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) business days in advance of the evidentiary hearing. [Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.](#)

### **1.6.17 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.

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- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### **1.7.2 Other Pleadings**

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### **1.7.3 Draft Initial Opinions**

The Hearing Officer may permit or require Participants to file draft initial opinions that set forth the Participants' proposed findings of fact and conclusions.

### **1.7.4 Hearing Officer's Initial Opinion**

Except as otherwise ordered by the BCC, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the BCC's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the BCC require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 1.5.10.

### **1.7.5 Exceptions**

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) business days after the

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time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."

- b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### 1.7.6 Oral Argument

The BCC may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified by the BCC. The BCC will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral

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argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the BCC's own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### **1.7.8 BCC Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the BCC shall issue its final order. Issuance of a final order shall require (i) a quorum of the BCC, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the BCC, and (ii) majority vote of the members of the BCC voting on the final order (which number of members voting shall not be less than a quorum). The BCC shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The BCC will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty". The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The BCC shall direct the Clerk to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights to NERC or to FERC, as applicable.

### **1.7.9 The Record**

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:

- 1) Notice of Alleged Violation and Registered Entity's response thereto;
- 2) Registered Entity's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;

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- 3) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 4) Registered Entity's request for a hearing;
- 5) Participant filings, motions, and responses;
- 6) Notices, rulings, orders and other issuances of the Hearing Officer and BCC;
- 7) Transcripts;
- 8) Evidence received;
- 9) Written comments submitted in lieu of written testimony;
- 10) Matters officially noticed;
- 11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 12) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 13) Post-hearing pleadings other than briefs;
- 14) The Hearing Officer's initial opinion;
- 15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 16) The BCC's final order, any notice of Penalty issued therewith, and the Clerk's notice transmitting the final order to the Participants;
- 17) All notices of ex parte communications; and
- 18) Any notifications of recusal and motions for disqualification of a member of the BCC or Hearing Officer of Technical Advisor and any responses or replies thereto.

### **1.7.10 Appeal**

A Final Order of the BCC may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit to NERC the record of any docket that is the subject of an appealed final order.

### **1.8 Settlement**

Settlements may be entered into at any time pursuant to Section 5.4 of the NERC Compliance Monitoring and Enforcement Program and the FRCC's settlement procedures.

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### **1.9 Remedial Action Directives**

#### **1.9.1 Initiation of Remedial Action Directive Hearing**

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. The FRCC will notify NERC within two (2) business days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the FRCC that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to the FRCC within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.

#### **1.9.2 Remedial Action Directive Hearing Procedure**

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Paragraphs 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the BCC will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing



## Compliance Monitoring and Enforcement Program

arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.

- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the BCC. Oral argument shall not be held.
- f) The BCC shall issue a summary written decision within ten (10) business days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the BCC shall issue a full written decision. The written decision shall state the conclusions of the BCC with respect to the Remedial Action Directive, and shall explain the reasons for the BCC's conclusions.

**DOCKET NOS. RR06-1-016/017 AND RR07-03-004/005**

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

**ATTACHMENT 4**

**REVISED AMENDED AND RESTATED DELEGATION AGREEMENT  
BETWEEN NERC AND  
NORTHEAST POWER COORDINATING COUNCIL, INC.**

**ATTACHMENT 4A:  
CLEAN VERSION OF REVISED DELEGATION AGREEMENT**

**ATTACHMENT 4B:  
REDLINED VERSION OF REVISED EXHIBIT D  
TO DELEGATION AGREEMENT**

**ATTACHMENT 4C:  
CLEAN AND REDLINED VERSIONS OF  
REVISED NPCC COMPLIANCE COMMITTEE  
SCOPE OF WORK DOCUMENT**

**ATTACHMENT 4A:**

**CLEAN VERSION OF REVISED DELEGATION AGREEMENT**



NORTHEAST POWER COORDINATING COUNCIL, INC.  
1515 BROADWAY, NEW YORK, NY 10036-8901 TELEPHONE: (212) 840-1070 FAX: (212) 302-2782

February 9, 2009

Mr. David N. Cook  
North American Electric Reliability Corporation  
Princeton Forrestal Village  
116-390 Village Boulevard  
Princeton, NJ 08540-5721

Dear David,

Attached is an Amended and Restated NPCC Regional Delegation Agreement Package that has been revised to respond to FERC's December 19, 2008 Order regarding the Regional Delegation Agreements (RDAs). It is NPCC's understanding that this document, along with the other Regional Entities' RDAs, will be filed by NERC with FERC and applicable Canadian regulatory and/or governmental authorities on or about February 17, 2009.

NPCC is prepared to execute this Amended and Restated NPCC Regional Delegation Agreement upon approval by FERC.

Please do not hesitate to contact me if you have any questions.

Sincerely,

*Edward A. Schwerdt*

Edward A. Schwerdt  
President & CEO

EAS:jm

cc: NPCC Board of Directors

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND NORTHEAST POWER COORDINATING COUNCIL, INC.**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this \_\_\_ day of \_\_\_\_\_ 2008, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Northeast Power Coordinating Council, Inc. (NPCC), a cross-border regional entity and criteria services corporation for Northeastern North America established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and NPCC may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

**WHEREAS**, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

**WHEREAS**, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter “Order 672”);

**WHEREAS**, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

**WHEREAS**, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

**WHEREAS**, the Act and Section 39.8 of the Commission’s regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as NPCC provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

**WHEREAS**, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

**WHEREAS**, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

**WHEREAS**, NPCC is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

**WHEREAS**, NERC will work through NPCC to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

**WHEREAS**, NERC has concluded that NPCC meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, NERC and NPCC, agree as follows:

**1. Definitions.** The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to NPCC to propose and enforce Reliability Standards pursuant to the Act.

(d) NPCC Rules means the bylaws, a rule of procedure or other organizational rule or protocol of NPCC.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

**2. Representations.**

(a) For purposes of its Delegated Authority, NPCC hereby represents and warrants to NERC that:

(i) NPCC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. NPCC is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any NPCC decision and no single industry sector can veto any NPCC decision. The NPCC Amended and Restated Bylaws are attached hereto in **Exhibit B**<sup>1</sup>, and as so attached are in full force and effect. No other such corporate governance documents are binding upon NPCC.

(ii) As set forth in **Exhibit C** hereto<sup>2</sup>, NPCC has developed a standards development procedure, which provides the process that NPCC may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto<sup>3</sup>, NPCC has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to NPCC that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

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<sup>1</sup> The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

<sup>2</sup> The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

<sup>3</sup> The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.



### 3. Covenants.

(a) During the term of this Agreement, NPCC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend NPCC Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of NPCC under this Agreement without first obtaining the consent of NPCC, which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and NPCC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

### 4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of NPCC in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to NPCC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided,

however, that both NPCC and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, NPCC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

## **5. Reliability Standards.**

(a) In connection with its Delegated Authority, NPCC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords NPCC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through NPCC's process as set forth in **Exhibit C**. Proposals approved through NPCC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. NPCC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

**6. Enforcement.**

(a) In connection with its delegated authority pursuant to this Agreement, NPCC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the U.S. portions of the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and NPCC agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. NPCC may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, NPCC agrees to comply with the NERC Rules in implementing this program.

(b) NPCC shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and NPCC shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by NPCC shall be filed with NERC, in accordance with the NERC Rules.

(e) NPCC shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) NPCC shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, NPCC shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review NPCC's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) NPCC shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

**7. Delegation-Related Services.** NERC will engage NPCC on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

8. **Funding.** NPCC and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund NPCC activities necessary for NPCC to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon NPCC without providing appropriate funding to carry out such mandates;

(b) NPCC and NERC agree that costs of carrying out NPCC's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is proposed by NPCC and approved by NERC and the Commission. If NPCC proposes to use a formula other than net energy for load beginning in the following year, NPCC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and NPCC to the Commission pursuant to 18 C.F.R. §39.4 for such year.

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide NPCC with the form for budget submittal no later than April 30 of the prior year.

(e) NPCC shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other NPCC activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The NPCC budget submission shall include supporting materials, including NPCC's complete business plan

and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. NPCC shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(f) NPCC's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve NPCC's budget for meeting its responsibilities under the Delegation Agreement.

(h) NPCC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) NPCC shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of NPCC in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which NPCC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which NPCC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of NPCC.

**9. Assignment.** This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. NPCC may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit NPCC from contracting with other entities to assist it in carrying out its Delegated Authority, provided NPCC retains control and responsibility for such Delegated Authority.

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years from the original effective date of May 2, 2007, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that NPCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If NPCC meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of NPCC's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time NPCC may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by NPCC and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

**12. Limitation of Liability.** NPCC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and NPCC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental,



special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the NPCC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the NPCC or NERC is found liable for gross negligence or intentional misconduct, in which case NPCC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

**13. No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

15. **Amendment.** Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

16. **Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of NPCC under this Agreement without first obtaining the consent of NPCC, which consent shall not be unreasonably withheld or delayed. To the extent NPCC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of NPCC under this Agreement, NPCC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by NPCC to NERC and the Commission, or at such other time as may be mutually agreed by NPCC and NERC.

17. **Dispute Resolution.** In the event a dispute arises under this Agreement between NERC and NPCC, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

18. **Notice.** Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric  
Reliability Corporation  
116-390 Village Blvd.  
Princeton, NJ 08540-5721  
Attn: David Nevius  
Facsimile: (609) 452-9550

If to NPCC:

Northeast Power Coordinating  
Council, Inc.  
1515 Broadway  
New York, New York 10036  
Attn: Edward A. Schwerdt  
Facsimile: (212) 302-2782

**19. Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

**20. Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

**21. Savings Clause.** Nothing in this Agreement shall be construed to preempt or limit any authority that NPCC may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. **Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. **Execution of Counterparts.** This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

**NOW THEREFORE**, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

NORTHEAST POWER  
COORDINATING COUNCIL, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

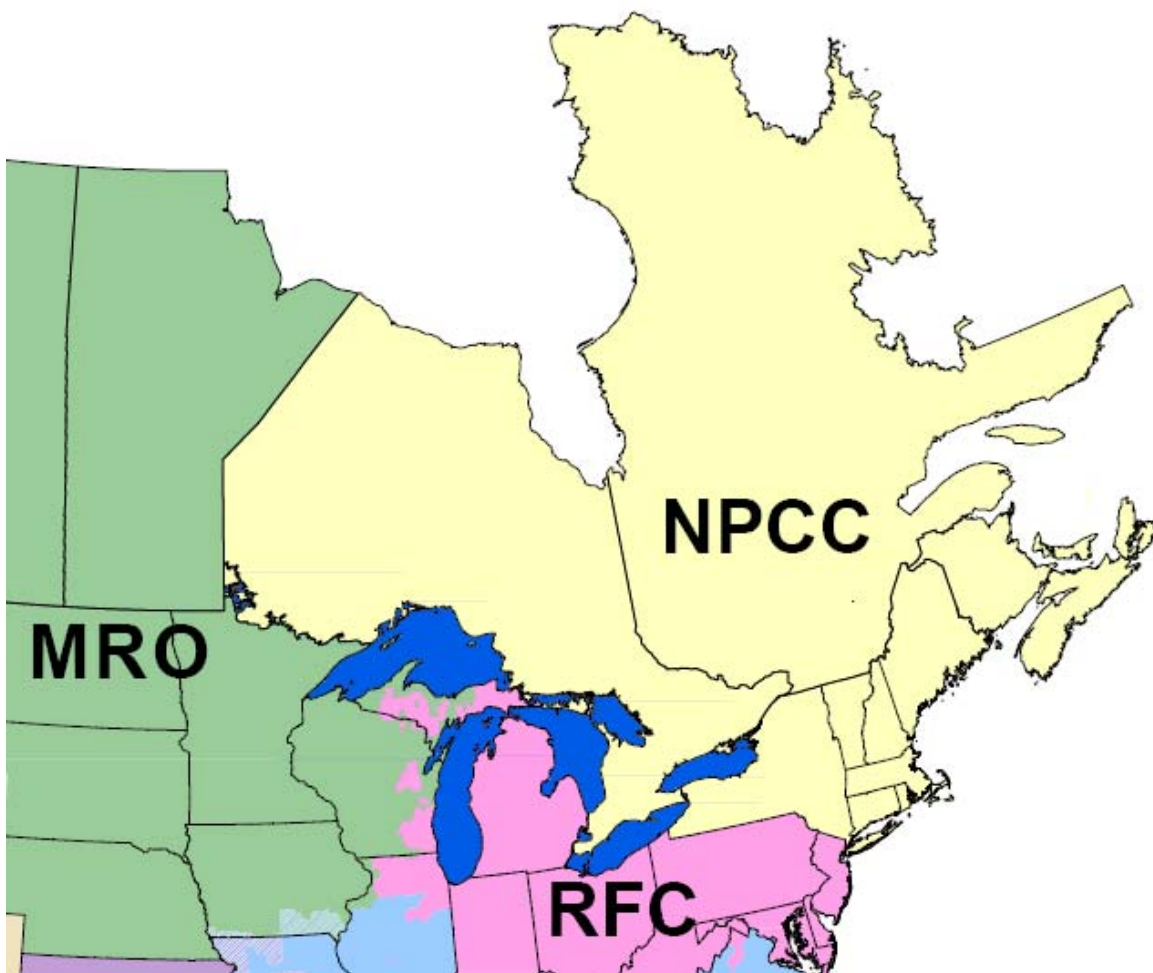
Date: \_\_\_\_\_

Date: \_\_\_\_\_



## Northeast Power Coordinating Council, Inc. (NPCC)

### Exhibit A – Geographic Area



The geographic area covered by NPCC includes New York state, the six New England states, and Ontario, Quebec, and the Maritime Provinces in Canada. The total population served is approximately 56 million. The area covered is approximately 1 million square miles.

## Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

**CRITERION 1:** The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

**CRITERION 2:** The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

**CRITERION 3:** If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

**CRITERION 4:** The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

**CRITERION 5:** The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)



## **Exhibit B – Governance**

### **AMENDED AND RESTATED**

### **BYLAWS**

### **OF**

### **NORTHEAST POWER COORDINATING COUNCIL, INC.**

#### **I. Offices**

The principal office of Northeast Power Coordinating Council, Inc. (“NPCC”) shall be located in New York County, State of New York.

#### **II. Purpose of Northeast Power Coordinating Council, Inc.**

The purpose of NPCC is to promote and enhance the reliable and efficient operation of the international, interconnected bulk power system in Northeastern North America through (i) the development of regional reliability standards and compliance assessment and enforcement of continent-wide and regional reliability standards, coordination of system planning, design and operations, and assessment of reliability, pursuant to an agreement with the Electric Reliability Organization (“ERO”) which designates NPCC as a regional entity and delegates authority from the U.S. Federal Energy Regulatory Commission (“FERC”), and by Memoranda of Understanding with applicable Canadian Provincial regulatory and/or governmental authorities (collectively, “statutory activities”), and (ii) the establishment of regionally-specific criteria, and monitoring and enforcement of compliance with such criteria (collectively, “non-statutory criteria services”). In the development of regionally-specific reliability criteria, NPCC, to the extent possible, facilitates attainment of fair, effective and efficient competitive electric markets.

#### **III. Terms**

Terms not defined in these Bylaws shall have the definitions set forth in the Federal Power Act, Part 39 of the regulations of the FERC, as further clarified in FERC’s April 19, 2007 Order 119 FERC 61,060, and if not defined in any of those sources, shall be

defined in accordance with their commonly understood and used technical meanings in the electric power industry, including applicable codes and standards.

“Bulk Power System” shall be deemed to refer to the interconnected electrical systems within Northeastern North America comprising generation and transmission facilities on which faults or disturbances can have a significant adverse impact outside of the local area. In this context, local areas and the specific facilities that comprise the bulk power system are determined by the Members of NPCC, utilizing a reliability impact based methodology.

“Northeastern North America” shall be deemed to comprise the geographical area within the perimeter border enclosing the State of New York, the six New England States of the United States, and the Canadian Provinces of Ontario, Québec, New Brunswick and Nova Scotia, including any radial load or generation connecting to these systems.

#### IV. **Membership**

- A. **List of Members.** The Members of NPCC are listed on Schedule A attached hereto.
- B. **Eligibility.** Upon suitable application describing the nature and activities of the applicant, additional entities shall be accepted by the Board of Directors of NPCC (the “Board”) as Members in the appropriate categories, defined as follows:
- (1) **General Membership** is voluntary and is open to any person or entity, including any entity participating in the Registered Ballot Body of the ERO that has an interest in the reliable operation of the Northeastern North American bulk power system. General Members are subject to compliance with reliability standards and receive additional services from the regional entity division of NPCC.
  - (2) **Full Membership** shall be available to entities which are General Members that also participate in electricity markets in the international, interconnected bulk power system in Northeastern North America. Independent system operators (“ISOs”), regional transmission organizations (“RTOs”), Transcos and other organizations or entities that perform the Balancing Authority function operating in Northeastern North America are expected to be Full Members of NPCC. The New York State Reliability Council and any other sub-regional reliability councils which may be formed are also expected to be Full Members. Full Members are subject to compliance with regionally-specific criteria, in addition to reliability standards, and receive additional services from the criteria services division of NPCC.



- C. Application as a Member. Any person or entity that is eligible to become a Member of NPCC in accordance with Article IV.B. may become either a General Member or a Full Member by completing and submitting to NPCC a membership application on a form prescribed by the Board. Any person or entity that applies to NPCC as a Member shall comply with the conditions and obligations of membership specified in these Bylaws. As an additional condition of membership in NPCC, each person or entity registering as a Member shall execute an agreement with NPCC, in a form to be specified by the Board, that such person or entity will hold all Directors, officers, employees and agents of NPCC, as well as volunteers participating in good faith in the activities of NPCC, harmless, to the extent permitted by U.S. Federal or Canadian Provincial laws, rules and regulations, for any injury or damage caused by any act or omission of any Director, officer, employee, agent or volunteer in the course of performance of his or her duties on behalf of NPCC, other than for acts of gross negligence, intentional misconduct or a breach of confidentiality.

If not a natural person, the Member shall designate a representative and an alternate representative with authority to receive notices, cast votes, execute waivers and consents, and enter into binding agreements on behalf of the Member. NPCC shall maintain a current roster of the Members of NPCC, including each Member's designated representative and alternate representative. From time to time, the Board may establish a date by which Members shall submit their application renewals. All Members shall confirm their applications within thirty (30) calendar days of the date of receipt of request by NPCC, using an application renewal form prescribed by the Board. Any Member that has not submitted an application renewal within thirty (30) calendar days following the date established by the Board shall be removed from the NPCC roster. NPCC shall notify any Member that is removed from the roster of Members of such removal, by notice sent to such former Member's last known address on the records of NPCC.

- D. Voting. There shall be eight (8) voting sectors ("Voting Sectors"), defined as follows:

**Sector (1).** Transmission Owners: This Voting Sector shall consist of any entity within Northeastern North America that owns at least 200 circuit miles of integrated transmission facilities, or has an Open Access Transmission Tariff or equivalent on file with the FERC or the appropriate regulatory or governmental authority. This sector includes transmission owners that have placed their transmission under the operational control of an ISO/RTO, independent transmission companies and merchant transmission owners/developers.

**Sector (2).** Reliability Coordinators: This Voting Sector shall consist of any entity within Northeastern North America certified as a Reliability Coordinator.

**Sector (3).** Transmission Dependent Utilities (“TDUs”); Distribution Companies and Load-Serving Entities (“LSEs”). This Voting Sector shall consist of entities within Northeastern North America that are:

- (a) Entities with a regulatory contract, or other legal obligation to serve wholesale aggregators or end-use customers, and that depend primarily on the transmission systems of third parties to provide this service;
- (b) Agents or associates that represent groups of TDUs;
- (c) Electric distribution companies;
- (d) Entities serving end-use customers under a regulated tariff, a contract governed by a regulatory tariff, or other legal obligation to serve; or
- (e) Each member of a generation and transmission (“G&T”) cooperative or a joint-action agency permitted to designate the G&T or joint action agency to represent it in this sector.

**Sector (4).** Generator Owners: This Voting Sector shall consist of entities within Northeastern North America that are affiliated and/or independent generators.

**Sector (5).** Marketers, Brokers and Aggregators: This Voting Sector shall consist of entities within Northeastern North America that are:

- (a) Entities providing energy to end-use customers under a power marketing agreement or other authorization not classified as a regulated tariff;
- (b) Entities that buy, sell, or broker energy and related services for resale in wholesale or retail markets, whether a non-jurisdictional entity operating within its charter or an entity licensed by a jurisdictional regulator; or
- (c) Generation and transmission cooperatives and joint-action agencies that perform an electricity broker, aggregator, or marketer function.

**Sector (6).** Customers: This Voting Sector shall consist of entities within Northeastern North America that are:

- (a) Entities or customers that take delivery of energy that is not purchased for resale within Northeastern North America;

- (b) Agents or associations representing groups of large end users within Northeastern North America; or
- (c) Agents, state consumer advocates, or other advocate groups representing groups of small customers within Northeastern North America.

**Sector (7).** State and Provincial Regulatory and/or Governmental Authorities. This Voting Sector shall consist of State and Provincial regulatory or governmental authorities within Northeastern North America.

**Sector (8).** Sub-Regional Reliability Councils, other Regional Entities and Interested Entities: This Voting Sector shall consist of:

- (a) Any entity within Northeastern North America authorized by an appropriate regulatory and/or governmental authority to be a Sub-Regional Reliability Council;
- (b) Any other delegated Regional Entity; or
- (c) Any person or entity, including any entity participating in the Registered Ballot Body of the ERO, that has an interest in the reliable operation of the bulk power system in Northeastern North America.

E. Assignment to Voting Sector. A new applicant for membership shall request to be assigned to a Voting Sector subject to Board approval. A Member may request to be assigned to any Voting Sector so long as membership in that Voting Sector is consistent with the Member's business or other activities within the NPCC region. Multiple memberships of the separate business functions of an entity are permitted, with each membership assigned to the appropriate separate sector and each membership designating a different representative and alternate. A consultant, attorney, agent, vendor, trade or industry association, state, provincial or local consumer advocate organization that provides services to or otherwise represents the interests of the Members of one or more Voting Sectors may elect to be assigned to one such Voting Sector subject to Board approval. Entities may elect to change their Voting Sector participation in connection with the Annual Meeting of Members of NPCC, subject to Board approval.

F. Term of Membership. Membership in NPCC shall be retained so long as a Member meets its respective qualifications, obligations, and conditions of membership as set forth in this Article IV.

V. **Organization of NPCC**

- A. Each Member shall designate an executive level representative and an alternate representative with full authority to act on its behalf in carrying out the work of NPCC.
- B. NPCC shall have a Board of Directors and shall retain a Chairman, who shall serve as Chair of the Board. The Board shall also consist of two Co-Vice Chairs, the President and the Secretary, all *ex officio*; and additional Directors to be selected by the eight Voting Sectors of Members as specified below. The Directors shall designate two Co-Vice Chairs. The Co-Vice Chair designees shall be from different Voting Sectors and shall be elected by a vote of the entire Membership. In the temporary absence of the Chair, a Vice Chair designated by two-thirds vote of the Directors shall perform the duties of the Chair. NPCC's Chairman, President and officers, when serving *ex officio*, shall not have any vote on Board matters, except that the Co-Vice Chairs shall retain the voting rights that they otherwise held by virtue of serving as a Director.
- C. The officers of NPCC shall consist of a President, a Secretary and a Treasurer, with assistants as appropriate, and such additional officers as may be approved by the Members. Officers, except for the President, shall hold office for one year or until the next Annual Meeting of Members of NPCC and until their successors are duly elected and qualified.
- D. NPCC shall employ a President and staff, as required to carry out NPCC's mission and to perform the functions of NPCC. The President shall be appointed by the Board and shall serve at the Board's discretion. In the event of a vacancy in the presidency, the Board shall appoint an interim President who shall serve until such time as the Board appoints a new President.
- E. In the event a vacancy occurs in the Board of Directors, or in the office of Co-Vice Chair, Secretary, or Treasurer in the interim between Annual Meetings of Members of NPCC, the Chair may designate a person from the same Voting Sector to fill such vacancy with the approval of a majority vote of Members from the applicable Sector.
- F. In the event a vacancy occurs in the Office of Chair in the interim between Annual Meetings of Members of NPCC, the Board may fill such vacancy by a two-thirds affirmative majority of the weighted sector votes, with each Director casting one vote within the applicable sector, at a meeting of the Board at which a quorum is present. The term of office of the persons designated to fill any such vacancy shall expire on the date of the next subsequent Annual Meeting of Members of NPCC. The authority and responsibilities of the Chair and the President shall be defined by the Board.

- G. Statutory activities will be conducted by the regional entity division of NPCC. Non-statutory criteria services will be provided by the criteria services division of NPCC.

## **VI. Board of Directors**

- A. Hybrid Board. NPCC shall have a Board of Directors consisting of stakeholders balanced by sector and an independent Chairman, two Co-Vice Chairs, the President, and the Secretary.
- B. Term and Compensation. The term of office of the Directors shall be three (3) years. Initial terms of Directors shall be staggered by the Board so that members serve initial terms of one, two, or three years. There shall be no limit on the number of terms which may be served by any individual. Directors shall serve without compensation, including when performing duties of a Co-Vice Chair.
- C. Powers and Duties. The Board shall develop NPCC policies, direct the activities of NPCC, accept additional entities as Members, review and approve or modify Member Voting Sector assignment, and make assignments to the committees of NPCC. The Board shall (i) approve a Regional Delegation Agreement with the ERO which delegates authority from FERC in the United States and additional agreements with appropriate Canadian Provincial regulatory and/or governmental authorities, (ii) approve and oversee NPCC's Regional Reliability Standards Development Process and submit such Regional Standards to the ERO for adoption by FERC and appropriate Canadian Provincial regulatory and/or governmental authorities, (iii) approve the NPCC Compliance Enforcement Program and the assessment and enforcement of mandatory compliance with Reliability Standards consistent with the Regional Delegation Agreement and agreements with Canadian Provincial regulatory and/or governmental authorities, and (iv) oversee NPCC's assessment and enforcement of mandatory compliance with regionally-specific reliability criteria through administration of the NPCC Reliability Compliance and Enforcement Program. The duties of the Board shall also include consideration and resolution of budgetary matters, including the levying of any special assessments, and determination of any annual membership fee for Full Members. However, the Board may not amend these Bylaws or establish, modify or eliminate any of NPCC's Regional Reliability Standards, regionally-specific reliability criteria, guides, programs or procedures; nor may the Board add, modify, or eliminate Voting Sectors established pursuant to these Bylaws.

To carry out the purposes of NPCC, the Board, acting through the President and NPCC staff, shall enlist such personnel from Members as may be necessary; and, within the limits of the annual budget, may employ such personnel, incur such

administrative expenses, and retain such independent professional consulting services for NPCC and the committees of NPCC as it may deem desirable.

D. Board Composition. NPCC shall have a Board of Directors that shall consist of up to eight (8) voting sectors. The voting sectors shall include the following:

**Sector (1).** Transmission Owners (Maximum of 3, with no more than 1 per Balancing Authority Area)

**Sector (2).** Reliability Coordinators (Maximum of 3)

**Sector (3).** Transmission Dependent Utilities (“TDUs”); Distribution Companies and Load-Serving Entities (“LSEs”) (Maximum of 3)

**Sector (4).** Generator Owners (Maximum of 3)

**Sector (5).** Marketers, Brokers and Aggregators (Maximum of 3)

**Sector (6).** Customers (Maximum of 3)

**Sector (7).** Regulators (Maximum of 3)

**Sector (8).** Sub-Regional Reliability Councils, other Regional Entities and Interested Entities (Maximum of 3, with a representative of the New York State Reliability Council, LLC included)

E. Quorum and Voting Requirements for the Board. At any meeting of the Board, attendance in person or by proxy by at least one-half of the Directors in each of at least sixty percent (60%) of the sectors shall constitute a quorum. Except as otherwise expressly provided in NPCC’s Certificate of Incorporation, these Bylaws or applicable law, actions by the Board shall be approved upon receipt of a two-thirds affirmative majority of the weighted sector votes, with each Director casting one vote within the applicable sector, at a meeting of the Board at which a quorum is present. The following process shall be used to determine if there are sufficient affirmative votes:

- The number of votes cast is the sum of affirmative and negative votes, excluding abstentions.
- The number of affirmative votes cast in each Voting Sector will be divided by the sum of affirmative and negative votes cast in that Voting Sector to determine the fractional affirmative vote for each Voting Sector. Abstentions will not be counted for the purposes of determining the fractional affirmative vote for a Voting Sector.
- The sum of the fractional affirmative votes from all sectors divided by the number of sectors voting will be used to determine if a two-thirds

affirmative majority has been achieved. A sector will be considered as “voting” if any Member of the sector casts either an affirmative or a negative vote.

An action will be approved if the sum of fractional affirmative votes from all sectors divided by the number of voting sectors is at least two-thirds.

- F. Board Action Without Meeting. Any action required, or permitted to be taken at a meeting of the Board of Directors, may be taken without a meeting if the action is taken by all members of the Board. The action must be evidenced by one or more written consents (which may be in electronic form) describing the action taken, signed by each Director, and included in the minute book of NPCC. Any action taken under this Section VI.F. is effective when the last Director signs the consent, unless the consent specifies a different effective date.
- G. Election and Removal of Directors. The Initial Board shall be the persons named in the Certificate of Incorporation and shall serve until the first Annual Meeting of the Members. The Initial Board shall nominate a list of Directors consistent with the Board composition requirements set forth in Section VI.D. At the first meeting of the Members, the Members from each sector shall vote to elect Directors in their respective sector. A Director shall be elected by a vote of the majority of the Members in the respective sector. No sector shall elect more Directors than the number of Members in such sector.
- A Director may be removed for cause by at least two-thirds of the Members in their respective sector at a regular meeting or at a special meeting called for that purpose; *provided* that there is a quorum of that sector’s Members present at that meeting, or by at least a majority of the Directors present at a meeting called for that purpose, and *provided, further*, that there is a quorum of not less than a majority present at the meeting of Directors at which such action is taken.
- H. Indemnification. Subject to the limitation set forth in Section VI.I. below, NPCC shall indemnify its Directors, Officers, employees and other corporate agents, including volunteers participating in good faith in the activities of NPCC and persons serving on duly constituted committees of NPCC (collectively, “NPCC Indemnitees”), in each case, to the full extent from time to time permitted by New York Not-for-Profit Corporation Law (“N-PCL”) and other applicable law. Such right of indemnification shall inure to the benefit of the legal representative of any NPCC Indemnitee. The foregoing right of indemnification shall be in addition to, and not in restriction or limitation of, any right such NPCC Indemnitee may have under applicable law (including the N-PCL).
- I. Limitation on Indemnification. The maximum amount of losses (i.e., damages, judgments, fines, penalties, liability, costs and expenses, including reasonable attorneys’ fees and expenses) for which NPCC will be obligated to indemnify the NPCC Indemnitees under Section VI.H. will be the policy limit of directors and

officers' ("D&O") liability insurance set forth in the D&O insurance policy maintained by NPCC.

## **VII. Committees**

NPCC shall have such committees, subcommittees, task forces and other groups as the Board may deem appropriate, including a Regional Standards Committee (RSC), a Compliance Committee (CC), a Reliability Coordinating Committee (NPCC's principal technical committee), a Public Information Committee and an Audit and Finance Committee.

The Audit and Finance Committee shall be comprised of at least three members of the Board and include one Director which shall be designated an audit committee financial expert by the Board. A chairperson of the Audit and Finance Committee shall be designated by the Board from among the members of the committee.

Committee members shall be nominated and approved by the Board in accordance with guidelines established by the Board. Quorum and voting rules applicable to the Board shall also apply to voting on any such NPCC decision making committees, unless otherwise determined by the Board. Each committee shall establish a charter or scope of work, which shall be presented to the Board for approval.

## **VIII. Members' Voting Rights**

- A. Quorum and Voting Requirements for Meetings of Members. At any meeting of the Members of NPCC, attendance in person or by proxy by one-half of the Members in each of at least sixty percent (60%) of the Voting Sectors on the roster of Members maintained by NPCC shall constitute a quorum. Except as otherwise expressly provided in NPCC's Certificate of Incorporation, these Bylaws or applicable law, actions by the Members of NPCC shall be approved upon receipt of a two-thirds affirmative majority vote of the sectors at a meeting of the Members of NPCC at which a quorum is present, where (i) each Member shall have one vote within a sector, except that if less than one-half of the Members in a sector are present, in person or by proxy, at the meeting, the vote of that sector shall be weighted by a percentage equal to the number of Members of the sector present in person or by proxy at the meeting divided by one-half of the Members in the sector; (ii) the vote of each sector of NPCC shall be allocated for and against the proposed action based on the respective percentages of votes cast for and against the proposed action by the Members in that sector voting in person or by proxy; and (iii) the proportions of the votes of each sector allocated for and against the proposed action shall be summed to determine the total number of votes for and against the proposed action.

The following process is used to determine if there are sufficient affirmative votes:



- The number of votes cast is the sum of affirmative and negative votes, excluding abstentions.
  - The number of affirmative votes cast in each sector will be divided by the sum of affirmative and negative votes cast to determine the fractional affirmative vote for each sector. Abstentions will not be counted for the purposes of determining the fractional affirmative vote for a sector.
  - The sum of the fractional affirmative votes from all sectors divided by the number of sectors voting will be used to determine if a two-thirds affirmative majority has been achieved. (A sector will be considered as “voting” if any Member of the sector casts either an affirmative or a negative vote.)
- B. Waivers of Notice of Meetings of Members; Member Meeting Adjournments. Notice of a Meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice of the meeting by such Member. When any Meeting of Members is adjourned to another time or place, it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and if at the adjourned meeting only such business is transacted as might have been transacted at the original meeting.
- C. Actions Without a Meeting of Members. Any action, required or permitted to be taken at a Meeting of Members, may be taken without a meeting if the action is consented to in writing by the minimum number of Members that would be required to approve the action at a Meeting of Members at which all Members were present. The call for action without a Meeting of Members may be initiated by the Chairman of the Board or by a number of Members constituting at least ten percent (10%) of the Members on the roster of Members maintained by NPCC, which number shall include Members in at least four (4) of the Voting Sectors. Notice of the proposal for action without a meeting shall be provided to all Members on the roster of Members maintained by NPCC at least seven (7) days prior to the date established for the tabulation of consents. The Members shall receive written notice of the results within fourteen (14) days of the action vote, and all written responses of the Members shall be filed with the minutes of proceedings of Members.
- D. Meeting of Members to be Open. Notice to the public of the dates, places, and times of Meetings of Members, and all non-confidential material provided to the Members, shall be posted on NPCC’s web site at approximately the same time that notice is given to the Members. Meetings of Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting

facilities; *provided* that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation, or commercially sensitive or critical energy infrastructure information of any entity.

- E. Electronic Voting. Upon completion of applicable processes that permit parties to comment on the subject issue(s), electronic voting on matters before the membership, Board or any committee is permitted. A quorum will be determined to exist for purposes of conducting an electronic vote when NPCC receives completed ballots from two-thirds of the total number of outstanding ballots. In the event that a quorum exists for purposes of an electronic vote but the matter has not been resolved, NPCC may continue to solicit additional responses in order to resolve the matter by electronic voting.

## **IX. Membership Rights and Obligations, and Organizational Process**

- A. All General and Full Members shall have the following rights and obligations:

(1) Rights:

- (a) Attendance at all meetings of the general membership of NPCC; and, subject to procedures established by the committees and to the terms of applicable confidentiality agreements, attendance at meetings of NPCC's committees, task forces and any other such NPCC groups.
- (b) Access to minutes of each committee, subcommittee, task force or any other NPCC group, subject to procedures established by the committees and to the terms of applicable confidentiality agreements.
- (c) Vote to amend these Bylaws.
- (d) Vote to establish, modify or eliminate NPCC Regional Reliability Standards and programs.
- (e) For Full Members only: Vote to establish, modify or eliminate NPCC regionally-specific reliability criteria.

(2) Obligations:

- (a) Each Member shall agree, in writing, to accept the responsibility to promote, support, and comply with the purposes and policies of NPCC as set forth in its Certificate of Incorporation and Bylaws as from time to time adopted, approved or amended.

- (b) Each Member acknowledges that it has the responsibility to plan and design its bulk power system and conduct its operations in compliance with ERO Reliability Standards, Regional Reliability Standards and Regional Variances consistent with applicable laws, regulations, permits and licenses.
- (c) Each Member agrees to submit such data and reports as required by NPCC in order to perform compliance enforcement obligations delegated to it by the ERO, subject to established procedures and to the terms of applicable confidentiality agreements.
- (d) In addition, each Full Member shall:
  - (i) plan and design its bulk power system in compliance with Criteria, Guides, and Procedures established by NPCC and applicable ERO Standards;
  - (ii) conduct its operations in compliance with Criteria, Guides, and Procedures established by NPCC and applicable ERO Standards consistent with applicable laws, regulations, permits and licenses;
  - (iii) assure that, whenever it enters into arrangements with non-members which could have an impact on the reliability of the international, interconnected bulk power systems in Northeastern North America, the arrangements will not adversely impact the ability of the Full Members to comply with regionally-specific criteria established by NPCC, ERO Standards, or the criteria of regional reliability organizations established in areas in which the facilities used for such arrangements are located;
  - (iv) notify NPCC of its existing facilities and operating procedures and of its plans for major additions or modifications affecting the operation of the interconnected systems; and shall report to NPCC any decision as to significant alterations or changes proposed for their respective electric systems, whether in generation, transmission, inter-system communication or control and protective equipment, or in operating procedures; such report to be submitted promptly and, except in cases of emergency, before final commitments are undertaken or changes in operating procedures become effective;
  - (v) promptly notify NPCC and all other Members in writing or electronically if its bulk power system is not being

designed or operated, or its operations are not being conducted in compliance with Criteria, Guides, and Procedures established by NPCC, stating its reasons, and providing its plan and schedule to achieve compliance;

- (vi) submit such data and reports as required by the Reliability Compliance and Enforcement Program and to abide by the compliance assessments and sanctions prescribed by NPCC's enforcement procedures, subject to Alternative Dispute Resolution; and
- (vii) undertake and perform the administrative and financial obligations described in Article XIII of these Bylaws.

B. Standards Development Procedure. NPCC shall develop a Regional Reliability Standards Development Procedure that provides the design-basis approach to a consensus building process by which NPCC may develop Regional Reliability Standards and Regional Variances to be proposed to the ERO for adoption, under delegated authority by the FERC and the Canadian Provincial regulatory and/or governmental authorities.

C. Procedures for Enforcing Compliance with Reliability Standards. Where regulatory approval has been obtained or governmental authority has been provided, upon the determination of the NPCC Board that a user, owner or operator of the bulk power system has violated a reliability standard, NPCC shall enforce compliance for such violations, pursuant to procedures and processes that shall be specified in the NPCC Compliance Enforcement Program. Such procedures and processes shall provide for reasonable notice and opportunity for hearing. Any sanction imposed for a violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation and shall take into consideration circumstances surrounding the violation and efforts of the owner, operator, or user of the bulk power system to remedy the violation in a timely manner. Subject to any necessary action by any applicable governmental authorities, no sanction imposed for a violation of a reliability standard shall take effect until the thirty-first (31st) day after the NPCC Board, where authorized by law or agreement, files with the FERC or other applicable Canadian regulatory and/or governmental authority's notice of the sanction and the record of the proceedings in which the violation and sanction were determined, or such other date as ordered by the FERC or other applicable Canadian regulatory and/or governmental authorities or as prescribed by applicable law.

X. **Full Members: Enforcement of Mandatory Compliance With Regionally-specific Criteria**

Subject to approval of the Full Members, NPCC shall establish an NPCC Reliability Criteria Compliance and Enforcement Program, including matrices for measuring compliance,

levying non-monetary sanctions, and procedures for Alternative Dispute Resolution. Such program shall be administered by the NPCC Board. The Reliability Coordinating Committee, with the full cooperation of each member, shall expeditiously evaluate, as appropriate, alterations or measures designed to correct any assessed non-compliance and shall report such studies to the NPCC Board.

## **XI. Meetings**

Meetings of NPCC may be held on such dates as the Board may from time to time determine and shall be held in such places as the Board may from time to time designate. Special meetings may be called from time to time by the Chair, the Board, or by a number of Members constituting at least ten percent (10%) of the Members on the roster of Members maintained by NPCC, which number shall include Members in at least four (4) of the Voting Sectors. Notice of all meetings, stating the time and place, shall be given by NPCC in writing to each Member by issuing the notice at least one week prior to the date of the meeting. The Secretary, Assistant Secretary, or, in their absence, a secretary *pro tempore* designated by the Chair or the President, shall keep the records of NPCC meetings.

When appropriate, the membership, the Board and the committees may use proxies or teleconference facilities. Such participation shall constitute attendance for purposes of quorum requirements.

## **XII. Budget**

The Board shall prepare or cause to be prepared an annual budget for the administrative and other expenses of NPCC, including the expenditures for the fiscal year for any material special projects undertaken by NPCC and reasonable and proper reserves and provisions for contingencies, an accompanying business plan for NPCC, and a funding mechanism including any supplemental funding mechanism, for each fiscal year. The annual budget, business plan, and funding mechanism of NPCC shall be developed in the form and format and on the schedule stipulated by the ERO for a fiscal year commencing on January 1 and ending on December 31. Each annual budget, business plan, and funding mechanism shall be approved by the Board at a regular meeting or a special meeting of the Board duly called for that purpose. The Board shall approve each annual budget, business plan, and funding mechanism on or before the date stipulated by the ERO during the year prior to the start of the fiscal year in order to allow for timely submittal of the approved annual budget, business plan, and funding mechanism to the FERC and the applicable Canadian regulatory and/or governmental authorities.

If the ERO or a regulatory and/or governmental authority by order remands an annual budget, business plan, or annual, modified, or supplemental funding mechanism, the Board shall promptly address such other through appropriate follow-up measures with the Members and regulatory and/or governmental authorities.

Each Full Member shall be notified of the annual administrative expense budget for the criteria services division, on or before December 1st of the preceding year.

### **XIII. Funding**

NPCC's annual administrative expenses, including any special assessments approved by the Board, shall be apportioned and funded as follows:

- A. Funding of NPCC General Member regional entity division activities shall be through mechanisms established by the ERO, FERC and applicable Canadian regulatory and/or governmental authorities.
- B. General Members shall not be assessed an annual membership fee.
- C. Full Members, other than Full Members that perform the Balancing Authority function, shall not be assessed an annual membership fee.
- D. Full Members that perform the Balancing Authority function shall be assessed and pay a proportional share of the expenses for non-statutory criteria services in proportion to the ratio of the second previous year's Net Energy for Load within the Balancing Authority Area to the aggregate Net Energy for Load within all Balancing Authority Areas in Northeastern North America. NPCC will directly assign non-statutory criteria services costs to a Balancing Authority Area or entity where significant costs are incurred by NPCC for such Area or entity.
- E. No Full Member shall, without its consent, be responsible for expenses of NPCC in any one calendar year in excess of its assessed portion of the amount budgeted for non-statutory criteria services for that year; *provided, however*, that special assessments may be separately budgeted and their cost allocated by the Board to the Full Members that perform the Balancing Authority function.

### **XIV. Termination of Membership and Cessation of Non-Statutory Criteria Services**

- A. Termination. All General Members and Full Members, other than Full Members that perform the Balancing Authority function, may terminate their membership in NPCC at any time upon fifteen (15) days' written or electronic notice without liability to NPCC. A Full Member that performs the Balancing Authority function may terminate its rights and obligations under these Bylaws (other than its obligation to pay its proportionate share of the non-statutory expenses of NPCC, including special assessments, if applicable, for the full calendar year within which such termination is effective) at any time upon one year's written notice to the President; whereupon, it shall cease to be a Full Member of NPCC as of the date such termination is effective. The President shall promptly inform all Members of receipt of any such notices.
- B. Cessation of Non-Statutory Criteria Services. The Full Members of NPCC may elect by a majority vote to cease non-statutory criteria services.

## **XV. Conflicts of Interest**

NPCC has developed a Code of Conduct that sets forth NPCC policies with respect to, among other things, conflicts of interest. On an annual basis, Directors shall evidence their compliance with NPCC conflict of interest principles by either: (i) signing an Individual Participant Implementation Agreement and thereby agreeing to comply with NPCC's Code of Conduct to the best of his/her ability; or (ii) agreeing that the execution of a Member Entity Implementation Agreement by the employer of such Board member evidences the Board member's agreement to be bound by its employer's Code of Conduct when performing NPCC activities. The Board shall establish similar Code of Conduct compliance requirements for NPCC staff and membership personnel participating on committees, task forces, and working groups as appropriate.

## **XVI. General**

- A. No Member shall be liable for the failure of any other Member to perform its obligations hereunder.
- B. No NPCC officer, member of the Board or member of any other NPCC committee or group, or employee of NPCC shall be personally liable to NPCC or any member thereof, for damages for breach of any duty owed to NPCC or any member thereof, except for liabilities arising from breach of any duty based upon an act or omission (i) in breach of the duty of loyalty owed to NPCC or any individual member, (ii) not in good faith or involving a knowing violation of law, or (iii) resulting in receipt of an improper personal benefit by such NPCC officer, member of the Board or member of any other NPCC committee or group, or employee of NPCC. Neither the amendment nor repeal of this paragraph, nor the adoption of any provision of these Bylaws inconsistent with this paragraph, shall eliminate or reduce the protection offered by this paragraph to an NPCC officer, member of the Board or member of any other such NPCC committee or group, or employee of NPCC in respect of any matter which occurred, or any cause of action, suit or claim which, but for this paragraph, would have accrued or arisen, prior to such amendment, repeal, or adoption.
- C. Those entities listed as Members on Schedule A and subsequent applicants granted membership in NPCC shall be deemed to have accepted and to be bound by all the terms and conditions of these Bylaws, as adopted on July 24, 2007.

*APPROVED 7-24-07*

## Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

### COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA [add reference to any applicable authorities in Canada and Mexico]. No regional reliability standard shall be effective within the NPCC area unless filed by NERC with FERC [and applicable authorities in Canada and Mexico] and approved by FERC and applicable authorities in Canada.

### COMMON ATTRIBUTE 2

NPCC regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A NPCC reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

### COMMON ATTRIBUTE 3

NPCC regional reliability standards, when approved by FERC and applicable authorities in Canada, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the NPCC area, regardless of membership in the region.

### COMMON ATTRIBUTE 4

**Requester** — The requester is the sponsor of the regional reliability standard request and may assist in the development of the standard. Any member of NPCC, or group within NPCC shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the NPCC area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.



### **COMMON ATTRIBUTE 5**

**Regional Standards Committee** — The NPCC Regional Standards Committee manages the standards development process. The Regional Standards Committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The Regional Standards Committee will advise the NPCC board on standards presented for adoption.

### **COMMON ATTRIBUTE 6**

**[Registered ballot body** — The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with NPCC as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

### **COMMON ATTRIBUTE 7**

NPCC will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the NPCC and NERC websites.

### **COMMON ATTRIBUTE 8**

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

### **COMMON ATTRIBUTE 9**

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

### **COMMON ATTRIBUTE 10**

The Regional Standards Committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The Regional Standards Committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The Regional Standards Committee shall prioritize the development

of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.

- Reject the standard request. If the Regional Standards Committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the Regional Standards Committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the Regional Standards Committee.

#### **COMMON ATTRIBUTE 11**

Any standard request that is accepted by the Regional Standards Committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the NPCC website within [no greater than 30] days of acceptance by the committee.

#### **COMMON ATTRIBUTE 12**

The standards process manager shall submit the proposed members of the drafting team to the Regional Standards Committee. The Regional Standards Committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

#### **COMMON ATTRIBUTE 13**

At the direction from the Regional Standards Committee, the standards process manager shall facilitate the posting of the draft standard on the NPCC website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to NPCC stakeholders and other potentially interested entities, both within and outside of the NPCC area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

#### **COMMON ATTRIBUTE 14**

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the NPCC website no later than the next posting of the proposed standard.

### **COMMON ATTRIBUTE 15**

Upon recommendation of the drafting team, and if the Regional Standards Committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

### **COMMON ATTRIBUTE 16**

The standards process manager shall schedule a vote by the NPCC registered ballot body. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

### **COMMON ATTRIBUTE 17**

The NPCC registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

### **COMMON ATTRIBUTE 18**

All members of NPCC are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

### **COMMON ATTRIBUTE 19**

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

### **COMMON ATTRIBUTE 20**

Under no circumstances may the board substantively modify the proposed regional reliability standard.

### **COMMON ATTRIBUTE 21**

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada.

## COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the NPCC bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in NPCC, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the NPCC members and others.

## COMMON ATTRIBUTE 23

- **Balanced** - The NPCC standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

## COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the NPCC area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

## COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

## COMMON ATTRIBUTE 26

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

## COMMON ATTRIBUTE 27

- Does not unnecessarily delay development of the proposed reliability standard.

### **COMMON ATTRIBUTE 28**

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

### **COMMON ATTRIBUTE 29**

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

### **COMMON ATTRIBUTE 30**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

### **COMMON ATTRIBUTE 31**

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

### **COMMON ATTRIBUTE 32**

<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.  If not applicable to the entire NPCC area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
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### **COMMON ATTRIBUTE 33**

<b>Measure(s)</b>	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.
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### **COMMON ATTRIBUTE 34**

<b>Compliance Monitoring Process</b>	Defines for each measure: <ul style="list-style-type: none"><li>• The specific data or information that is required to measure performance or outcomes.</li><li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li><li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li><li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li><li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li><li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li><li>• Violation severity levels.</li></ul>
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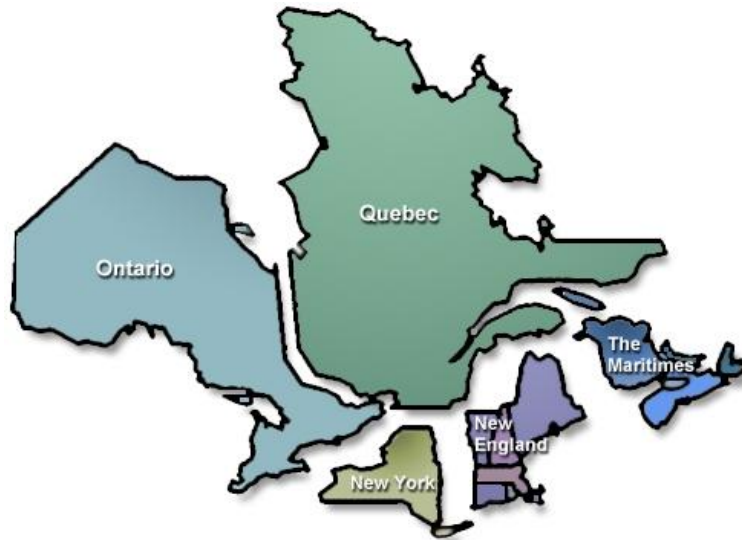


NORTHEAST POWER COORDINATING COUNCIL, INC.  
1515 BROADWAY, NEW YORK, NY 10036-8901 TELEPHONE: (212) 840-1070 FAX: (212) 302-2782

## Exhibit C

# Northeast Power Coordinating Council, Inc.

## Regional Reliability Standards Development Procedure



Approved by NPCC Board of Directors  
September 19, 2007

# NPCC

## REGIONAL RELIABILITY STANDARDS DEVELOPMENT PROCEDURE

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## **I. EXECUTIVE SUMMARY**

The purpose of the Northeast Power Coordinating Council, Inc. ("NPCC"), is to enhance the reliability of the international, interconnected bulk power system in Northeastern North America through the development of more stringent and specific regional reliability standards and compliance assessment and enforcement of continent-wide and regional reliability standards pursuant to the execution and implementation of a Regional Delegation Agreement with the Electric Reliability Organization ("ERO") and applicable Canadian Memoranda of Understanding that are backstopped by the Federal Energy Regulatory Commission ("FERC") and Canadian Provincial authorities. In the development and enforcement of Regional Reliability Standards, NPCC, to the extent possible, facilitates attainment of fair, effective, efficient, and competitive electric markets.

General Membership in NPCC is voluntary and is open to any person or entity, including any entity participating in the Registered Ballot Body of the ERO that has an interest in the reliable operation of the Northeastern North American bulk power system.

The NPCC Regional Reliability Standards Development Procedure describes the procedures, policies and practices implemented to ensure an "open, fair, and inclusive" process for the transparent initiation, development, implementation and revision of NPCC Regional Reliability Standards necessary for the reliable operation of the international and interconnected bulk power system in Northeast North America. These Standards will, in all cases, not be inconsistent with or less stringent than any requirements of the North American Electric Reliability Council/Electric Reliability Organization (NERC/ERO) Reliability Standards. The procedure will not unnecessarily delay the development of the proposed reliability standards. Each regional reliability standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of pertinent reliability principles and criteria, thereby ensuring that no standard undermines reliability through an unintended consequence.

## **II. REGIONAL RELIABILITY STANDARD DEVELOPMENT PROCEDURE**

### **1. CHARACTERISTIC ATTRIBUTES**

The NPCC Regional Reliability Standards Development Procedure is:

- **Open** — The NPCC Regional Reliability Standards Development Procedure provides any person the ability to participate in the development of a standard. Any entity that is directly and materially affected by the reliability of the NPCC's bulk power system has the ability to participate in the development and approval of reliability standards. There are no undue financial barriers to participation. Participation in the open comment process is not conditional upon membership in the ERO, NPCC or any organization, and participation is not unreasonably restricted on the basis of technical qualifications or other such requirements. NPCC utilizes a website to accomplish this. Online posting and review of standards and the real time sharing of comments uploaded to the website allow complete transparency.

- **Inclusive** — The NPCC Regional Reliability Standards Development Procedure provides any person with a direct and material interest the right to participate by expressing an opinion and its basis, have that position considered, and appealed through an established appeals process if adversely affected.
- **Balanced** — The NPCC Regional Reliability Standards Development Procedure has a balance of interests and all those entities that are directly and materially affected by the reliability of the NPCC's bulk power system are welcome to participate and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter. This will be accomplished through the NPCC Bylaws defining eight sectors (categories) for voting.
- **Fair Due Process** — The NPCC Regional Reliability Standards Development Procedure provides for reasonable notice and opportunity for public comment. The procedure includes public notice of the intent to develop a standard, a 45 calendar day public comment period on the proposed standard request, or standard with due consideration of those public comments, and responses to those comments will be posted on the NPCC website. A final draft will be posted for a 30 calendar day pre-balloting period, and then a ballot of NPCC Members will be conducted. Upon approval by the NPCC Members, the NPCC Board then votes to approve submittal of the Regional Standard to NERC.
- **Transparent** — All actions material to the development of Regional Reliability Standards are transparent and information regarding the progress is posted on the NPCC website as well as through extensive email lists.

In as much as NPCC is one of several regional entities within the Eastern Interconnection of North America, there will be **no presumption of validity** by the ERO for any NPCC Regional Reliability Standard. In order to receive the approval of the ERO, the NPCC Reliability Standards Development Process must also achieve the following objectives:

- **No Adverse Impact on Reliability of the Interconnection** —An NPCC Regional Reliability Standard provides a level of bulk power system reliability that is necessary and adequate to protect public health, safety, welfare, and North American security and will not have an adverse impact on the reliability of the Interconnection or other Regions within the Interconnection.
- **Justifiable Difference** — An NPCC Regional Reliability Standard is based on justifiable differences between Regions, such as different electrical systems or facilities, sensitivity of load to disruptions, sensitivity of generation to disruptions, frequency and voltage sensitivity, system operating limit development and facilities ratings process, electrical system interactions, etc.
- **Uniformity**- NPCC Regional Reliability Standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk

power system of the North American continent. A NPCC Reliability Standard shall be more stringent than a continent-wide reliability standard, may include a regional variation that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the northeast's bulk power system, where the interpretation of the phrase "physical difference" will be consistent with FERC's Order, issued September 22, 2004, Granting Request For Clarification regarding Docket No. PL04-5-000, Policy Statement on Matters Related to Bulk Power System Reliability.

- **No Undue Adverse Impact on Commerce** — An NPCC Regional Reliability Standard will not cause any undue adverse impact on business activities that are not necessary for reliability of the Region and its interconnected Regions. All regional reliability standards shall be consistent with NERC's market principles.

**Other Attributes of the NPCC Regional Reliability Standards Development Procedure include;**

- **Maintenance of Regional Reliability Standards**-NPCC Regional Standards will be reviewed for possible revision at least every three years and follow the same process as a new standard. The old standard will remain in place until such time as the revised version has passed through the entire process, at which point the old standard will be retired in accordance with any applicable new implementation plan associated with the approved revised standard. The review process shall be conducted by soliciting comments from the stakeholders and through open posting on the NPCC website. If no changes are warranted, Regional Standards Committee (RSC) shall recommend to the NPCC Board that the standard be reaffirmed. If the review indicates a need to revise or withdraw a standard, a regional standard authorization request shall be prepared by the RSC and submitted in accordance with the standards development process contained in this procedure.
- **Maintenance of Regional Reliability Standards Development Procedure**-This NPCC Regional Reliability Standards Development Procedure will be reviewed for possible revision at least once every five years or more frequently if needed and subject to the same procedure as that of the development of a standard. All such revisions shall be subject to approval by the NPCC Board, NERC, FERC, and could be subject to approval, if required, by applicable authorities in Canada. The NPCC RSC has the authority to make non-substantive changes to this procedure and subsequently notify the NPCC Board for their concurrence at their next scheduled meeting.
- **Interpretation of Standards**- All persons who are directly and materially affected by the NPCC's bulk power system reliability shall be permitted to request an interpretation of a standard. The person requesting an interpretation will send an email request to the Regional Standards Process Manager (RSPM), as noted on the NPCC website, explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material

impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard. The RSPM along with guidance from the RSC will forward the request to the originating Task Force which acted as the drafting team for that regional reliability standard. The Task Force will address, through a written response, the request for clarification as soon as practical, but not more than 45 business days from its receipt by the Task Force. This written interpretation will be posted along with the final approved and adopted standard and will stand until such time as the standard is revised through the normal RSAR process, at which time the standard will be modified to incorporate the clarifications provided by the interpretation.

## 2. ELEMENTS OF A RELIABILITY STANDARD

### • **Elements of a Regional Reliability Standard**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

All mandatory requirements of a regional reliability standard shall be within the standard document. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

The most current version of the approved NERC Reliability Standard template and its associated elements as or if applicable, will be used at the time of the development of the NPCC Regional Reliability Standard to ensure all essential elements are contained therein to achieve consistency and uniformity and meet all statutory requirements. A sample of the elements contained in the standard appears in Table 1 below, however the latest ERO Board approved Standard template, that may be found on the NERC website, will supersede the list below at the time the regional standard is developed.

**Table 1- Elements of a Regional Reliability Standard**

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference. (i.e. “NPCC- BAL-002-0-Date” which refers to NPCC Regional Standard, referencing NERC BAL-002 Version 0, with NPCC Effective Date-final adoption by all Regional Authorities)
<b>Title</b>	A brief, descriptive phrase identifying the topic of the standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.  The standard will be applicable to the Bulk Power System unless otherwise noted.
<b>Effective Date</b>	The effective date of the standard or, prior to approval of the

<b>and Status</b>	standard, the proposed effective date.
<b>Purpose</b>	The purpose of the standard. The purpose shall explicitly state what outcome will be achieved or is expected by this standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.
<b>Risk Factor(s)</b>	<p>The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below:</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to bulk power system instability, separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to bulk power system instability, separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.</p> <p>A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the bulk power system, or the ability to effectively monitor and control the bulk power system, but is unlikely to lead to bulk power system instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to bulk power system instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor and control the bulk power system; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system.</p>

<b>Measure(s)</b>	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.
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**Table 2 — Compliance Elements of a Regional Reliability Standard**

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> <li>• Violation severity levels.</li> </ul>
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*Supporting Information Elements*

<b>Interpretation</b>	Any interpretation of regional reliability standard that is developed and approved in accordance with the “Interpretation of Standards” section of Appendix A of this procedure, to expound on the application of the standard for unusual or unique situations or to provide clarifications.
<b>Implementation Plan</b>	Each regional reliability standard shall have an associated implementation plan describing the effective date of the standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the standard in the compliance program and other considerations in the initial use of the standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.

<p><b>Supporting References</b></p>	<p>This section references related documents that support reasons for, or otherwise provide additional information related to the regional reliability standard. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Glossary of terms</li> <li>• Developmental history of the standard and prior versions</li> <li>• Notes pertaining to implementation or compliance</li> <li>• Standard references</li> <li>• Standard supplements</li> <li>• Procedures</li> <li>• Practices</li> <li>• Training references</li> <li>• Technical references</li> <li>• White papers</li> <li>• Internet links to related information</li> </ul>
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**3. TERMS AND FUNCTIONS**

- **Regional Standards Committee (RSC)**—An NPCC committee charged with management of the NPCC Standards Procedure under a sector based voting structure as described in the NPCC Bylaws. The NPCC RSC will consider requests for new or revised standards and be available for advisement to the NPCC Board on the standards.

The RSC may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard. Any RSC action will only be activated in the event of a minor correction of a standard such as errata.

The RSC is an open and balanced stakeholder committee inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system.

The RSC disposition regarding the regional standard authorization request, which will in all cases be within 60 calendar days of receipt of a completed standard request, shall include:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The RSC may, at its discretion, expand or narrow the scope of the standard request under consideration. The RSC shall prioritize the development of standards in relation to other proposed standards, as may be required based on the volume of requests and resources.

- Reject the standard request. If the RSC rejects a standard request, a written explanation for rejection will be delivered to the requester within 30 calendar days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the RSC. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the RSC.

The NPCC Standard Process responsibilities of the RSC will include:

- Review of NPCC Draft Standards for such factors as completeness, sufficient detail, rational result, and compatibility with existing standards; clarifying standard development issues not specified in this procedure. Under no circumstance will the RSC change the substance of a draft standard.
  - Due consideration to the work of the drafting team as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard to go to ballot.
  - Approve standards for pre-ballot posting under a sector based voting structure as described later in the NPCC ~~Inc.~~ Bylaws or
  - Remand the standard back to the Task Force acting as the drafting team for further work or recommend a change in those participating in the drafting team (i.e. a new drafting team).
- **Regional Standards Process Manager (RSPM)** - The Regional Reliability Standards Procedure shall be administered by a NPCC staff Regional Standards Process Manager. The RSPM is responsible for ensuring that the development and revision of standards is in accordance with this manual. The RSPM works to ensure the integrity of the process, format, consistency of quality, and completeness of the reliability standards. The RSPM facilitates all steps in the process.
  - **Reliability Coordinating Committee (RCC)** —The RCC, will support the standards development process through the assignment of NPCC Task Forces. They will also provide a technical advisory role in the Regional Reliability Standards development procedure through recommendations.
  - **Requester**— A Requester is any individual or an entity (organization, company, government authority, etc.) that submits a complete request for development, revision, or withdrawal of a standard. Any person or an entity that is directly and materially affected by an existing standard or the need for a new standard may submit a request for a new standard or revision to a standard. The Requester is assisted by the RSAR drafting team (if one is appointed by the RSC) to respond to comments and to decide if and when the RSAR is forwarded to the RSC with a request to draft a standard. The Requester is responsible for the RSAR, assisted by the RSAR drafting team and Regional Standards Process Manager, until such time the RSC authorizes



development of the standard. The Requester has the option at any time to allow the RSAR drafting team to assume full responsibility for the RSAR. The Requester may chose to participate in subsequent standard drafting efforts related to the RSAR.

- **Task Forces and Working Groups,**—The committees, task forces and working groups within NPCC , serve an active role in the standards process:
  - Identify the need for new or modified regional standards.
  - Initiate NPCC Standards actions by developing Regional Standard Authorization Requests (RSARs).
  - Develop comments (views and objections) to standards actions.
  - Participate in NPCC Standard drafting.
  - Provide technical oversight in response to changing industry conditions and ERO Requirements.
  - Conduct Field Tests as required

#### **4. PROCEDURE DESCRIPTION**

##### **STEPS 1 AND 2: REQUEST TO DEVELOP A NEW REGIONAL STANDARD**

Requests to develop a new Regional Reliability Standard shall be submitted to the RSPM by completing a **Regional Standard Authorization Request (RSAR)** (*see Appendix A*). The RSAR is a description of the new or revised standard in sufficient detail to clearly define the scope, purpose, and importance of the Regional Standard, impacted parties or other relevant information. A “needs” statement will provide the justification for the development of the standard, including an assessment of the reliability and market interface impacts of implementing or not implementing the standard. The RSPM shall maintain the RSAR form and make it available electronically on the NPCC website.

Any person or entity (“Requester”) directly or materially affected by an existing standard or the need for a new or revised standard may initiate a RSAR.

The Requester will submit the RSAR to the RSPM electronically and the RSPM will acknowledge receipt of the RSAR immediately, through electronic receipt. The RSAR, as a minimum, needs to contain the following information in order to be qualified for consideration. The NPCC RSPM will assist the Requester to ensure all the following information is submitted (on the RSAR) in a form appearing in Appendix A:

1. Proposed Title and Date of New RSAR
2. Requester’s Name and Contact Information
3. Purpose of the Regional Standard
4. Description of Industry Need
5. Provide a Brief Description of the Standard
6. Identification of the Entities in the Functional Model as being responsible to adhere to the standard.
7. Necessary information to assist the drafting the team, to the extent feasible, to allow them to draft the standard.
8. A cross references to existing NPCC or NERC documents

The RSPM shall forward all properly completed RSARs to the RSC. The RSC shall meet at established intervals to review all pending RSARs. The frequency of this review process will depend on workload, but in no case shall a properly completed RSAR wait for RSC action more than 60 calendar days from the date of receipt. The RSC may take one of the following actions:

- Remand the RSAR back to the RSPM for additional work. In this case, the RSPM may request additional information or clarification for the RSAR from the Requester.
- Accept the RSAR as a candidate for a new or revised standard. In this case, the RSC will forward the RSAR to the RCC to assign a NPCC Task Force to provide technical support and analysis of comments for that RSAR, and assist the Requester and the RSPM in the remaining steps of the process. The RSPM shall post notification of intent to develop a standard on both NPCC and ERO websites within 30 calendar days of acceptance.
- Reject the RSAR. In this case, the RSC will provide a written explanation for rejection to the Requester within 30 calendar days of the rejection decision.

#### **STEPS 3, 4, AND 5: RSC ACCEPTS RSAR AND RCC ASSIGNS TF TO DRAFT NEW OR REVISED STANDARD**

A RSAR that is accepted by the RSC will be submitted to the RCC. Within 60 calendar days the RCC shall assign the development of the standard to a Task Force Drafting Team. The RSPM shall solicit and recommend a list of additional candidates for appointment to the team and shall submit the list to the RSC. This list shall include the Requester. The RSC may select other individuals to serve, with the Task Force to draft the Standard. This team shall consist of a small group of people who collectively have the necessary technical expertise and work process skills.

The RSPM shall assign NPCC staff personnel to assist in the drafting of the standard including compliance measure, process and elements. The drafting of measures and compliance administration aspects of the standard will be coordinated with the Compliance Program.

#### **STEP 6: SOLICIT PUBLIC COMMENTS ON DRAFT STANDARD**

Once a draft standard has been verified by the RSC to be within the scope and purpose of the RSAR, the RSPM will post the draft standard for the purpose of soliciting public comments. The posting of the draft standard will be linked to the RSAR for reference. In addition to the standard, an implementation plan shall be posted to provide additional details to the public and aid in their commenting and decision process. Comments on the draft standard will be accepted for a 45 calendar day period from the public notice of posting. Comments will be accepted on-line using the NPCC Open Process web-based application.

Final draft standards will be concurrently posted on the ERO website for comments.

### **STEPS 7, 8, AND 9: OPEN PROCESS POSTING AND ANALYSIS OF THE COMMENTS**

The RSPM will assemble the comments on the new draft standard and distribute those comments to the Task Force acting as the standard drafting team. The Task Force shall give prompt consideration to the written views and comments of all participants. An effort to address all expressed comments shall be made, and each commenter shall be advised of the disposition of the comment and the reasons therefore, in addition to public posting of the responses.

The Task Force acting as the Standard Drafting Team shall take one of the following actions:

- Submit the draft standard for RCC endorsement as it stands, along with the comments received and responses to the comments. Based on the comments received, the Task Force acting as the standard drafting team may include revisions that are not substantive. A substantive change is one that directly and materially affects the application of the standard, including, for example: changing “shall” to “should,” changing “should” to “shall”; adding, deleting, or revising requirements; or adding, deleting, or revising measures for which compliance is mandatory.
- Make substantive revisions to the draft standard and reposts it for further open review and comment.
- Task Force recommends Field Test if necessary to RSC.

Requester also may withdraw the request for a standard.

RCC submits proposed RRS to the RSC along with its recommendation based on comments, Task Force statements and any field test results.

### **STEPS 10 AND 11: RSC APPROVES OF THE NEW OR REVISED STANDARD FOR POSTING**

If the RSC, acting with consideration of any recommendations by the RCC and utilizing the composite sector voting structure, as outlined in the NPCC, votes to post the draft standard for approval, the draft standard, all comments received, and the responses to those comments shall be posted electronically for the NPCC Members, by the RSPM and made public through the NPCC Website ([www.npcc.org](http://www.npcc.org)) for a 30 calendar day “pre-ballot review” and request for balloting. If the RSC decides more work is needed, the draft standard will be remanded back to the drafting Task Force. All actions of the RCC, Task Forces acting as drafting teams and the Regional Standards Committee will be recorded in regular minutes of the group(s) and posted on the NPCC website. Once the notice for a ballot has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued

### **STEPS 12, 13 AND 14: BALLOT OF STANDARD**

Upon notification of a ballot, the Members of NPCC’s registered ballot body will cast their vote consistent with the NPCC Bylaws. This ballot shall commence no sooner than 15 calendar days and no later than 30 calendar days following the notification of ballot. All members of the NPCC are eligible to participate in the voting on proposed, standard revisions or deletions of regional standards. The ballot period will typically begin immediately following the 30 calendar day pre-ballot posting and will last at least 10 business days.

The NPCC registered ballot body comprises all entities or individuals that qualify for one of the eight NPCC stakeholder sectors and are registered with NPCC as potential

ballot participants in the voting on standards. Each member of the NPCC registered ballot body is eligible to vote on standards.

In order for a NPCC Regional Standard to be approved;

- A quorum must be established by at least 50% of the NPCC Members of at least 60% of the Voting Sectors on the roster of Members maintained by NPCC.
- A two-thirds majority of the total weighted sector votes cast must be affirmative. The number of votes cast is the sum of affirmative and negative votes, excluding abstentions, and non-responses. Weighted sector vote will be calculated as follows;
  - Affirmative votes cast in each sector will be divided by the sum of affirmative and negative votes cast, in that same sector, to determine the fractional affirmative vote for each sector. Abstentions and non-responses will not be counted for the purposes of determining the fractional affirmative vote for a sector.
  - The sum of the fractional affirmative votes from all sectors divided by the number of sectors voting will be used to determine if a two-thirds majority has been achieved. (A sector will be considered as “voting” if any member of the sector in the ballot pool casts either an affirmative or a negative vote.)
  - A standard will be approved if the sum of fractional affirmative votes from all sectors divided by the number of voting sectors is at least 2/3.

Ballots will be cast electronically and alternatives are as follows;

- Affirmative
- Affirmative with Comments
- Negative
- Negative with Comments
- Abstain

The RSPM shall post the final outcome of the ballot process. If the standard is rejected, it may be withdrawn by either the RCC or the original Requester, or the standard may be remanded by the RSC back to the Task Force acting as the drafting team to address the issues. All comments submitted during the process will be posted and archived for consideration when redrafting the standard upon review.

The standard, once approved by ballot, and a recommendation will be forwarded to the NPCC Board for final Regional approval. The Board may not make substantive modifications to the standard. If the Board does not approve the standard for transmittal to NERC it will be remanded back to the RSC.

If the standard is approved, the standard will be submitted to the NERC/ERO Board of Trustees for approval.

**STEPS 15, 16 AND 17: IMPLEMENTATION OF THE NPCC REGIONAL STANDARD**

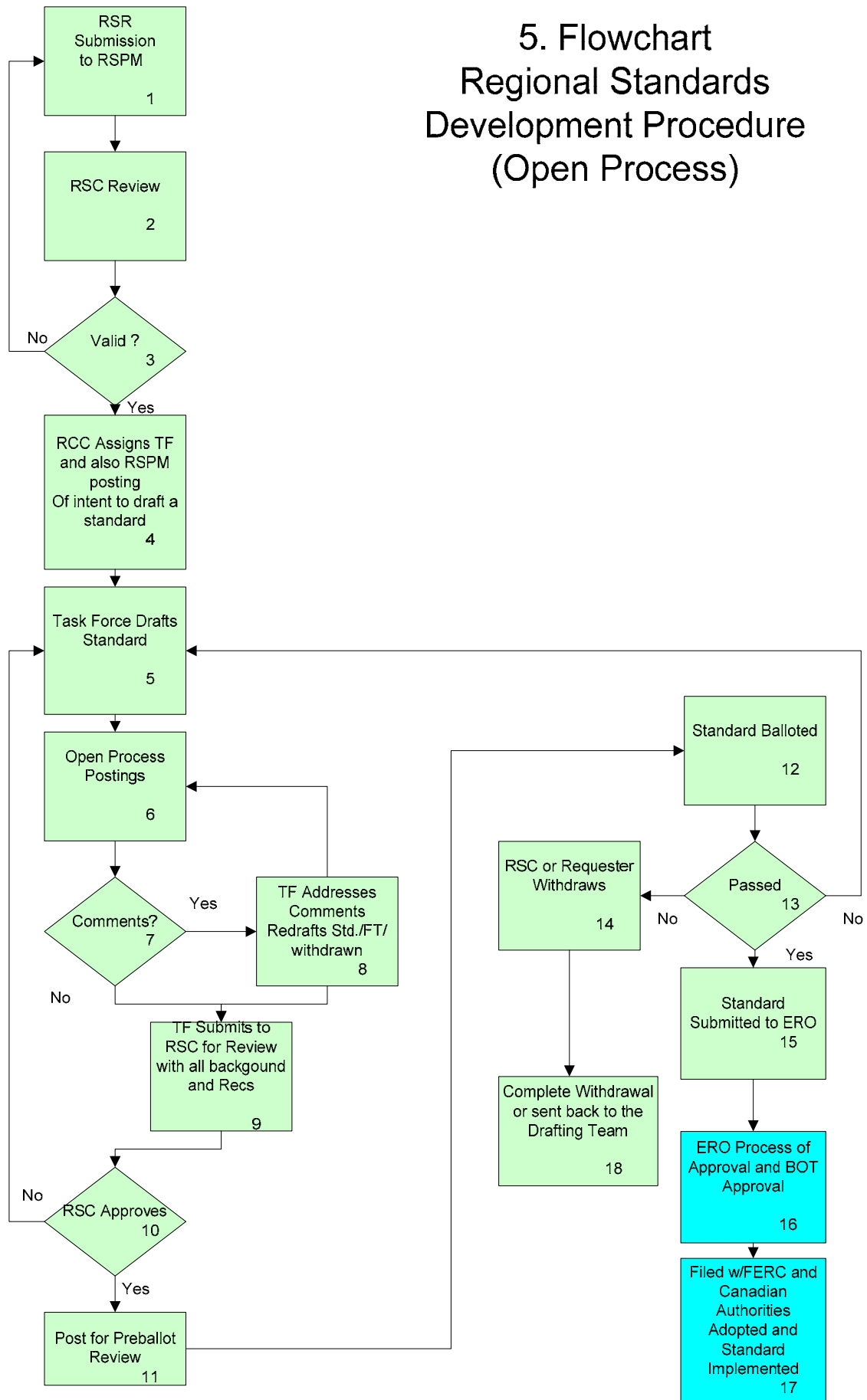
Upon approval within the NPCC , the standard will be submitted to the NERC/ERO for approval(s) and filing with FERC and applicable Canadian Governmental and/or Regulatory Authorities for adoption.

Once a reliability standard is adopted and made effective, all users, owners, planners, and operators of the Bulk Power System in the NPCC geographic area of the Northeast are required to comply with the standard. The NERC/ERO Board of Trustees has established a separate compliance program, also administered in the Northeast by NPCC , to measure compliance with the standards and administer sanctions as appropriate. After adoption of a NPCC Regional Standard, the standard will be forwarded to the compliance program for compliance monitoring and enforcement.

**STEP 18: WITHDRAWAL OF STANDARD**

Upon rejection of a proposed standard, the RCC or the requester may withdraw the standard completely or remand it back to the Task Force acting as the standard drafting team for further work.

## 5. Flowchart Regional Standards Development Procedure (Open Process)



## **6. ERO and Regulatory Process and Approvals**

- **NERC/ERO Comment Period** —NERC/ERO shall publicly notice and request comment on the NPCC Regional Reliability Standard, allowing a minimum of 45 calendar days for comment on NERC’s website and actively notify all adjoining Regions. Concurrent with this regional posting, final drafts will be forwarded to NERC for posting on the NERC website to ensure full industry awareness of the standard and expedite and coordinate all commenting. All comments will be responded to electronically through a posted response on the NPCC website or a link on the NERC website. NPCC shall have an opportunity to resolve any objections identified in the comments and may choose to withdraw the request, revise the NPCC Regional Reliability Standard and request another posting for comment, or submit the NPCC Regional Reliability Standard along with a response to any objections received, for approval by NERC.
- **NERC/ERO Approval of NPCC Regional Reliability Standards** — Proposed regional reliability standards shall be subject to approval by the NERC/ERO who shall have a process to evaluate and recommend whether a proposed non-Interconnection-wide NPCC Regional Reliability Standard has been developed in accordance with all applicable procedural requirements and whether NPCC has considered and addressed stakeholder objections. NPCC Board, having been notified of the results of the regional ballot concerning a NPCC Regional Reliability Standard, shall vote to submit the Standard to the NERC/ERO Board for approval as a NERC Reliability Standard. The NERC/ERO Board shall consider NPCC’s request, the scope and implications of the Standard, the recommendation for action on the Standard, any unresolved stakeholder comments, and NPCC’s consideration of comments and unresolved issues if any, in determining whether to approve the NPCC Regional Reliability Standard as a NERC Reliability Standard.
- **Regulatory Authority Approval** — An NPCC Regional Reliability Standard that has been approved by the NERC/ERO board shall be filed with FERC and applicable Canadian Governmental and/or Regulatory Authorities for approval and shall become effective and enforceable within the U.S., per Section 215 of the Federal Power Act, only when adopted by FERC, and within Canada, only when adopted by applicable Canadian Governmental and/or Regulatory Authorities. The regional reliability standard, once adopted will be made part of the body of NERC reliability standards and shall be mandatory and enforceable on all applicable bulk power system owners, operators, and users within the NPCC Region, regardless of membership status.

## **7. Appeals**

- Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a regional reliability standard shall have the right to appeal.

This appeals process applies only to the standards process as defined in this procedure.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 calendar days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

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

- Level 1 Appeal

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the RSPM that describes the substantive or procedural action or inaction associated with a reliability standard or the standards process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the RSPM shall prepare a written response addressed to the appellant as soon as practical, but not more than 45 calendar days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the standard and posted with the standard.

- Level 2 Appeal

If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the regional standards process manager, the RSPM shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by the NPCC's board.

In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The RSPM shall post the complaint and other relevant materials and provide at least 30 calendar days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the RSC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise,



approve, disapprove, or adopt a reliability standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to the NPCC Board for consideration at the time the board decides whether to adopt a particular reliability standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30 calendar days after the announcement of the vote on the standard in question.

APPENDIX A

## Information in a Regional Standard Authorization Request (RSAR)

The tables below identify information to be submitted in a Regional Standard Authorization Request to the NPCC Regional Standards Process Manager, [NPCCstandard@npcc.org](mailto:NPCCstandard@npcc.org) . The NPCC Regional Standards Process Manager shall be responsible for implementing and maintaining this form as needed to support the information requirements of the standards process.

### Regional Standard Authorization Request Form

Title of Proposed Standard:
Request Date:

### RSAR Requester Information

<i>Name:</i>	<b>RSAR Type (Check box for one of these selections.)</b>	
Company:	<input type="checkbox"/>	New Standard
Telephone:	<input type="checkbox"/>	Revision to Existing Standard
Fax:	<input type="checkbox"/>	Withdrawal of Existing Standard
Email:	<input type="checkbox"/>	Urgent Action

<b>Purpose</b> (Describe the purpose of the proposed standard – what the standard will achieve in support of reliability.)
<b>Industry Need</b> (Provide a detailed statement justifying the need for the proposed standard, along with any supporting documentation.)
<b>Brief Description</b> (Describe the proposed standard in sufficient detail to clearly define the scope in a manner that can be easily understood by others.)

### **Reliability Functions**

<b>The Standard will Apply to the Following Functions</b> (Check all applicable boxes.)		
<input type="checkbox"/>	Reliability Coordinator	The entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator’s vision.
<input type="checkbox"/>	Balancing Authority	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
<input type="checkbox"/>	Interchange Authority	Authorizes valid and balanced Interchange Schedules.
<input type="checkbox"/>	Planning Authority	The responsible entity that coordinates and integrates transmission facility and service plans, resource plans, and protection systems.
<input type="checkbox"/>	Transmission Service Provider	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.
<input type="checkbox"/>	Transmission Owner	The entity that owns and maintains transmission facilities.
<input type="checkbox"/>	Transmission Operator	The entity responsible for the reliability of its “local” transmission system, and that operates or directs the operations of the transmission facilities.
<input type="checkbox"/>	Transmission Planner	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area.

<input type="checkbox"/>	Resource Planner	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area.
<input type="checkbox"/>	Generator Operator	The entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.
<input type="checkbox"/>	Generator Owner	Entity that owns and maintains generating units.
<input type="checkbox"/>	Purchasing-Selling Entity	The entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.
<input type="checkbox"/>	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer.
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.

### **Reliability and Market Interface Principles**

<b>Applicable Reliability Principles</b> ( <i>Check all boxes that apply.</i> )	
<input type="checkbox"/>	1. Interconnected bulk power systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
<input type="checkbox"/>	2. The frequency and voltage of interconnected bulk power systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
<input type="checkbox"/>	3. Information necessary for the planning and operation of interconnected bulk power systems shall be made available to those entities responsible for planning and operating the systems reliably.
<input type="checkbox"/>	4. Plans for emergency operation and system restoration of interconnected bulk power systems shall be developed, coordinated, maintained, and implemented.
<input type="checkbox"/>	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected bulk power systems.
<input type="checkbox"/>	6. Personnel responsible for planning and operating interconnected bulk power systems shall be trained, qualified, and have the responsibility and authority to implement actions.
<input type="checkbox"/>	7. The security of the interconnected bulk power systems shall be assessed, monitored, and maintained on a wide-area basis.
<b>Does the proposed Standard comply with all of the following Market Interface Principles?</b> ( <i>Select ‘yes’ or ‘no’ from the drop-down box.</i> )	
Recognizing that reliability is a Common Attribute of a robust North American economy:	
1. A reliability standard shall not give any market participant an unfair competitive advantage. Yes	

2. A reliability standard shall neither mandate nor prohibit any specific market structure. Yes
3. A reliability standard shall not preclude market solutions to achieving compliance with that standard. Yes
4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards. Yes

**Detailed Description (Provide enough detail so that an independent entity familiar with the industry could draft a standard based on this description.)**

***Related Standards***

Standard No.	Explanation

<sup>-t</sup>  
***Related SARs or RSARs***

SAR ID	Explanation



## Northeast Power Coordinating Council, Inc.

### Exhibit D – Compliance Monitoring and Enforcement Program

#### 1.0 Regional Compliance Monitoring and Enforcement Program

##### 1.1 Obligations of NPCC

NPCC will implement the NERC Compliance Monitoring and Enforcement Program, including its Attachments, (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within the U.S. portion of NPCC's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

##### 1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

Compliance monitoring and enforcement programs will be implemented within the Canadian portion of NPCC's geographic area, consistent with individual Canadian Provincial Memoranda of Understanding (MOU) or Agreements and Canadian laws. All executed MOU's and Agreements will be provided to NERC as allowable under Canadian law.

#### 2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

NPCC shall establish and maintain a hearing body with authority to render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan.

The NPCC Compliance Committee, a committee reporting to the NPCC Board, will be responsible for impaneling a Hearing Body, when required. The Hearing Body will consist of five voting members of the Committee plus two alternates and business will always be conducted by five voting members as described in the *NPCC Hearing Procedure* (each member of the Hearing Body will be from a different voting sector). An independent Hearing Officer, who is not a member of the Compliance Committee, the NPCC Board, or NPCC Staff will conduct the hearing. Committee members who represent the Registered Entity involved in the Hearing cannot participate on the Hearing Body. The Hearing Body will utilize a simple majority vote to resolve issues. This voting rule, along with the structure of the Hearing Body, fully supports the requirement that no

two stakeholder sectors may control, and no single stakeholder sector may veto, a matter before the Hearing Body.

NPCC will utilize the Hearing Procedure described in Attachment 2 to address Remedial Action Directives that are contested. As such the Compliance Committee will be utilized in the hearing on Remedial Action Directives similar to as it is utilized in all other Hearings.

### **3.0 OTHER DECISION-MAKING BODIES**

NPCC Compliance Staff will review compliance submittals from Registered Entities related to Self-Certification; Self-Reporting; Exception Reporting; Periodic Data Submittals and Complaints. NPCC Compliance Staff will initially review all submittals received to assure that the information forwarded is accurate and complete. This process will be conducted by the staff members and may require contact via e-mail or phone to confirm information. If after, initially receiving a compliance submittal, the Compliance Staff identifies an instance of non-compliance, an Initial Notice of Alleged Violation (INOAV), without penalty, is issued to the Registered Entity, the NPCC Compliance Committee, and NERC while the Compliance Staff continues its more detailed and comprehensive review of the submittal. It is during this review that the Compliance Staff confirms the violation and also calculates an appropriate penalty or sanction. The Compliance Staff may consult with technical committees on a non-decisional basis for advice regarding a complex technical matter only, not a matter of compliance/non-compliance determination, before the Compliance Staff renders its final decision and issues a Notice of Alleged Violation with Penalty or Sanction (NOAV) to the Registered Entity and NERC. This consultation process may only be initiated by the NPCC Compliance Staff and is not used in anyway to determine appropriate proposals for penalties or sanctions for violations.

The use of technical committees on a non-decisional basis is not an inherent part of the review process, but instead is used on an ad hoc basis to provide technical expertise when the NPCC Compliance Staff determines it is necessary. The past experience of using these technical committees to address and resolve complex technical matters has always proven to be invaluable to NPCC. Any information furnished to a non-decisional technical committee will not include the identity of a specific Registered Entity but will include generic facts needed to resolve or clarify a particular technical matter. The NPCC independent Compliance Staff as well as the aforementioned technical committees will be bound by the antitrust guidelines, code of conduct, conflict of interest, confidentiality and any other applicable policies as referenced in the NERC Compliance Monitoring and Enforcement Program.

NPCC has implemented a comprehensive Compliance Audit and Spot Check Program that will be used to meet those requirements as included in the CMEP and consistent with the NERC Rules of Procedures. The annual Compliance Audit schedule is developed and included in the Annual CMEP Implementation Program. This schedule identifies the

Registered Entities that will be audited, when they will be audited and what type of Audit it will be (on-site or off-site). Once the schedule is established an NPCC Pre-audit package is developed containing the pre-audit questionnaire; the appropriate Reliability Standards Audit Worksheets (RSAWs); copies of relative Reliability Standards and other related documentation. The package is sent out at least 60 days prior to the scheduled audit and in most cases the package goes out 90 days or more in advance. The same package is used for either an on-site or off-site audit. The audit team is formed and consists of an NPCC Staff person (Audit Team Leader), an NPCC Contract Auditor, a NERC Staff representative (as an observer) and a FERC representative (if they elect to participate). The audit is conducted and the NPCC members of the team write the audit report and present it to the Registered Entity for their review and comment before it is finalized. The audit team is responsible for reporting all compliance related information. Applicable Standards are identified and compliance and non-compliance is noted. In instances of non-compliance the submittals made by the audit team are processed as other compliance inputs through the compliance staff as previously described.

The Spot Check Program is used as a means of verifying self-certifications, self-reports and periodic data submittals that have been made earlier in the year. An internal, unpublished schedule is developed by the compliance staff and each applicable Registered Entity is given 30 days notice that they must supply the requested information in support of an earlier referenced self-certification, self-reports or periodic data submittals. The staff reviews the submitted information and uses the submittal to verify the earlier self-certification, self-reports or periodic data submittals. Spot checking may also be random or may be initiated in response to events, as described in the Reliability Standards or by operating problems or system events. Upon completion of the compliance staff review an assessment is made and the Registered Entity is notified of the outcome. In instances of identified non-compliance the results are processed as other compliance inputs.

NPCC assigns a Compliance Liaison at the on-set of an event analysis. This event analysis thoroughly reviews the incident identifying all the facts and circumstances associated with the incident and a final report is developed summarizing the results of this analysis. The Compliance Liaison, in conjunction with other designated members of the NPCC Compliance Staff, identifies any applicable Reliability Standards related to the event. As soon as a determination is made that a Compliance Violation Investigation (CVI) is warranted (based on evidence of a possible violation of a Reliability Standard, whether based on information obtained in an event analysis or obtained through other means), NERC is notified that the CVI will be conducted and a final report will be presented to NERC upon the completion of the CVI.





## **Northeast Power Coordinating Council, Inc. (NPCC)**

### **Exhibit E — Funding**

#### 1. Scope of activities funded through the ERO funding mechanism

NPCC shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

#### 2. Allocation of Costs

NPCC shall allocate its charges for its activities within the U.S. pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement. NPCC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities or their designees within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate NPCC's charges under any such different method(s) of allocation and calculation that will be used.

#### 3. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities or their designees identified by NPCC covering the NERC and NPCC budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund NPCC's costs identified in Section 1 of this Exhibit E in four equal quarterly payments.

#### 4. Application of Penalties

All penalty monies received by NPCC from U.S. entities, other than penalty monies received from an operational function or division or affiliated entity of NPCC shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of NPCC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### 5. Budget and Funding for NPCC's Criteria Services Division (Non-Statutory Activities)

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such functions and activities referred to in this Section 5 as "statutory activities"), NPCC's Criteria Services division performs the following other functions and activities (such other functions and activities being referred to in this Section 5 as "non-statutory activities"):

### **NPCC List of Criteria Services Division Functions (Non-Statutory Activities)**

#### **1. Regionally-specific Criteria**

- NPCC develops and maintains regionally-specific more stringent criteria
- NPCC develops and maintains criteria establishing resource adequacy requirements within the Region

#### **2. Criteria Compliance Program**

- NPCC monitors and assesses compliance with its more stringent regional criteria
- NPCC conducts a Reliability Compliance and Enforcement Program (RCEP) utilizing non-monetary sanctions

NPCC shall employ the following methods and procedures to (i) keep its funding mechanisms for its regional entity division (statutory activities) separate from its funding mechanisms for its criteria services division (non-statutory activities), and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

**1. Funding of NPCC Criteria Services Division (non-statutory activities).**- A separate membership based funding mechanism is utilized for non-statutory activities.

**2. NPCC procedures for separating funding and expenditures for regional entity division (statutory activities) and criteria services division (non-statutory activities)**

NPCC utilizes the NERC System of Accounts (NSOA) to provide consistency for account codes, divisional separation codes and activity codes. In August of 2007, NPCC CBRE (which prior to the merger performed statutory activities) merged into and with Northeast Power Coordinating Council, Inc. (referred to as NPCC) (which prior to the merger performed non-statutory activities) with the merged corporation having divisional separation for Regional Entity and Criteria Services. As recommended by NERC, NPCC uses the not-for-profit MIP Fund Accounting program by Sage Software to accurately account for income, time and labor. Effective January 1, 2008, with corporate restructuring of NPCC completed in later 2007, 2008 actual program costs are being charged to appropriate program areas.

NPCC does not conduct resource or transmission planning, is not an Independent System Operator (ISO), nor does it perform the functions of a Reliability Coordinator (RC). As such, while at this time, there is a breakout for Criteria related activities, all functions performed by NPCC are in the furtherance of NERC’s statutory mission and reliability of the international bulk power system in Northeastern North America.

**Methodology**

NPCC’s revenue and expenditure classification methodology identifies appropriate methods of accounting for income, time and costs to ensure that U.S. Federal/statutory and Canadian provincial and/or governmental authorities’ agreed upon revenue and expenses are accounted for separately from NPCC’s regionally-specific Criteria development and Criteria compliance (non-statutory) income, time and expense.

**Division Codes**

There are two division codes that are used by NPCC in accounting for revenues and expenses. The codes are as follows:

	<b>Division ID</b>	<b>Division Name</b>
	RE	Regional Entity – U.S. Statutory and Canadian Regulatory and/or Governmental Authority authorized
	CSD	Criteria Services - Non-Statutory

The two division codes allow NPCC to separate Regional Entity statutory activity revenues and expenses from Criteria Services non-statutory activity revenues and expenses. These categories were developed to ensure that non-statutory related revenues and expenses are segregated and accounted for separately from statutory-related revenues and expenses.

**Program Codes**

As required by NERC, NPCC adopted a financial accounting system consistent with NERC’s functional categories. At NPCC, functional categories are referred to as Program Codes.

There are twelve program codes that are used by NPCC in accounting for expenses. The codes are as follows:

	<b>Program ID</b>	<b>Program Name</b>

	300	Reliability Standards
	400	Compliance Enforcement and Organization Registration and Certification
	800	Reliability Assessment and Performance Analysis
	700	Reliability Readiness Evaluation and Improvement
	900	Training and Education
	1000	Situational Awareness and Infrastructure Security
	ADMIN	General Administration
	FINANCE	Accounting and Finance
	HR	Human Resources
	IT	Information Technology
	LEGAL	Legal and Regulatory
	MEMBERS	Members Forum

Program codes are used to further delineate expenses into functional groupings that are assigned to program heads. NPCC staff utilize their assigned program codes (the program where they reside for payroll purposes) when coding expenses, unless otherwise authorized by management.

When time is spent in support of both statutory activities and non-statutory activities (applicable to a limited number of employees in the Administrative Services functions of General Administration, Accounting and Finance, Human resources, Information Technology, Legal and Regulatory and Members Forms), staff members develop accurate timesheet allocations between division codes.

Divisional separation with regard to statutory activities (Regional Entity division) and non-statutory activities (Criteria Services division) is reflected in the NPCC balance sheet and general ledger through the MIP Fund Accounting software programs.

NPCC shall provide its budget for such non-statutory activities to NERC at the same time that NPCC submits its annual budget request to NERC pursuant to Section 1. NPCC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of NPCC's non-statutory activities and a description of the funding sources for the non-statutory activities. NPCC agrees that no costs of non-statutory activities are to be included in the calculation of NPCC's charges for its activities pursuant to this Agreement.

**ATTACHMENT 4B:**

**REDLINED VERSION OF REVISED EXHIBIT D  
TO DELEGATION AGREEMENT**



## Northeast Power Coordinating Council, Inc.

### Exhibit D – Compliance Monitoring and Enforcement Program

#### 1.0 Regional Compliance Monitoring and Enforcement Program

##### 1.1 Obligations of NPCC

NPCC will implement the NERC Compliance Monitoring and Enforcement Program, including its Attachments, (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within the U.S. portion of NPCC's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

##### 1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

Compliance monitoring and enforcement programs will be implemented within the Canadian portion of NPCC's geographic area, consistent with individual Canadian Provincial Memoranda of Understanding (MOU) or Agreements and Canadian laws. All executed MOU's and Agreements will be provided to NERC as allowable under Canadian law.

#### 2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

NPCC shall establish and maintain a hearing body with authority to render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan.

The NPCC Compliance Committee, a committee reporting to the NPCC Board, will be responsible for impaneling a Hearing Body, when required. The Hearing Body will consist of five voting members of the Committee plus two alternates and business will always be conducted by five voting members as described in the NPCC Hearing Procedure (each member of the Hearing Body will be from a different voting sector). An independent Hearing Officer, who is not a member of the Compliance Committee, the NPCC Board, or NPCC Staff will conduct the hearing. Committee members who represent the Registered Entity involved in the Hearing cannot participate on the Hearing Body. The Hearing Body will utilize a simple majority vote to resolve issues. This voting rule, along with the structure of the Hearing Body, fully supports the requirement that no

Exhibit D – Amended and Restated NPCC Regional Delegation Agreement

February 17, 2009 FERC Compliance Filing

two stakeholder sectors may control, and no single stakeholder sector may veto, a matter before the Hearing Body.

~~The NPCC Compliance Committee (CC) shall serve in the role as the hearing body. The NPCC CC will consist of an NPCC Compliance Staff member as chairman and balanced stakeholder representatives appointed by the NPCC Board and reports directly to the NPCC Board. Members of the Committee will be selected by established NPCC procedure. Quorum rules applicable to the NPCC Board shall apply to the NPCC Compliance Committee.~~

~~When the NPCC CC is acting as a Hearing Body, the Chairman of the CC will not be part of the Hearing Body and voting will be by a simple majority. The Hearing Body will be led by the stakeholder elected Vice Chair, as long as he/she does not represent the Registered Entity involved in the Hearing.~~

~~Compliance Hearings will be conducted by a qualified, independent consultant Hearing Officer, who will present the results of the Hearing to the Hearing Body for their final determination. The Hearing Body will not be present at the actual Hearing but will have access to the complete record of that Hearing before it makes its final decision.~~

NPCC will utilize the Hearing Procedure described in Attachment 2 to address Remedial Action Directives that are contested. As such the Compliance Committee will be utilized in the hearing on Remedial Action Directives similar to as it is utilized in all other Hearings.

### **3.0 OTHER DECISION-MAKING BODIES**

NPCC Compliance Staff will review compliance submittals from Registered Entities related to Self-Certification; Self-Reporting; Exception Reporting; ~~and~~ Periodic Data Submittals and Complaints. NPCC Compliance Staff will initially review all submittals received to assure that the information forwarded is accurate and complete. This process will be conducted by the staff members and may require contact via e-mail or phone to confirm information. If after, initially receiving a compliance submittal, the Compliance Staff identifies an instance of non-compliance, an Preliminary-Initial Notice of Alleged Violation (PNOAV INOAV), without penalty, is issued to the Registered Entity, the NPCC Compliance Committee, and NERC while the Compliance Staff continues its more detailed and comprehensive review of the submittal. It is during this review that the Compliance Staff confirms the violation and also calculates an appropriate penalty or sanction. The Compliance Staff may consult with technical committees on a non-decisional basis for advice regarding a complex technical matter only, not a matter of compliance/non-compliance determination, before the Compliance Staff renders its final decision and issues a Notice of Alleged Violation with Penalty or Sanction (NOAV) to the Registered Entity and NERC. This consultation process may only be initiated by the NPCC Compliance Staff and is not used in anyway to determine appropriate proposals for penalties or sanctions for violations.

The use of technical committees on a non-decisional basis is not an inherent part of the review process, but instead is used on an ad hoc basis to provide technical expertise when the NPCC Compliance Staff determines it is necessary. The past experience of using these technical committees to address and resolve complex technical matters has always proven to be invaluable to NPCC. Any information furnished to a non-decisional technical committee will not include the identity of a specific Registered Entity but will include generic facts needed to resolve or clarify a particular technical matter. The NPCC independent Compliance Staff as well as the aforementioned technical committees will be bound by the antitrust guidelines, code of conduct, conflict of interest, confidentiality and any other applicable policies as referenced in the NERC Compliance Monitoring and Enforcement Program.

NPCC has implemented a comprehensive Compliance Audit and Spot Check Program that will be used to meet those requirements as included in the CMEP and consistent with the NERC Rules of Procedures. The annual Compliance Audit schedule is developed and included in the Annual CMEP Implementation Program. This schedule identifies the Registered Entities that will be audited, when they will be audited and what type of Audit it will be (on-site or off-site). Once the schedule is established an NPCC Pre-audit package is developed containing the pre-audit questionnaire; the appropriate Reliability Standards Audit Worksheets (RSAWs); copies of relative Reliability Standards and other related documentation. The package is sent out at least 60 days prior to the scheduled audit and in most cases the package goes out 90 days or more in advance. The same package is used for either an on-site or off-site audit. The audit team is formed and consists of an NPCC Staff person (Audit Team Leader), an NPCC Contract Auditor, a NERC Staff representative (as an observer) and a FERC representative (if they elect to participate). The audit is conducted and the NPCC members of the team write the audit report and present it to the Registered Entity for their review and comment before it is finalized. The audit team is responsible for reporting all compliance related information. Applicable Standards are identified and compliance and non-compliance is noted. In instances of non-compliance the submittals made by the audit team are processed as other compliance inputs through the compliance staff as previously described.

The Spot Check Program is used as a means of verifying self-certifications, self-reports and periodic data submittals that have been made earlier in the year. An internal, unpublished schedule is developed by the compliance staff and each applicable Registered Entity is given 30 days notice that they must supply the requested information in support of an earlier referenced self-certification, self-reports or periodic data submittals. The staff reviews the submitted information and uses the submittal to verify the earlier self-certification, self-reports or periodic data submittals. Spot checking may also be random or may be initiated in response to events, as described in the Reliability Standards or by operating problems or system events. Upon completion of the compliance staff review an assessment is made and the Registered Entity is notified of the outcome. In instances of identified non-compliance the results are processed as other compliance inputs.



NPCC assigns a Compliance Liaison at the on-set of an event analysis. This event analysis thoroughly reviews the incident identifying all the facts and circumstances associated with the incident and a final report is developed summarizing the results of this analysis. The Compliance Liaison, in conjunction with other designated members of the NPCC Compliance Staff, identifies any applicable Reliability Standards related to the event. As soon as a determination is made that a Compliance Violation Investigation (CVI) is warranted (based on evidence of a possible violation of a Reliability Standard, whether based on information obtained in an event analysis or obtained through other means), NERC is notified that the CVI will be conducted and a final report will be presented to NERC upon the completion of the CVI.

**ATTACHMENT 4C:**

**CLEAN AND REDLINED VERSIONS OF  
REVISED NPCC COMPLIANCE COMMITTEE  
SCOPE OF WORK DOCUMENT**

**CLEAN VERSION OF  
REVISED NPCC COMPLIANCE COMMITTEE  
SCOPE OF WORK DOCUMENT**



NORTHEAST POWER COORDINATING COUNCIL, INC.  
1515 BROADWAY, NEW YORK, NY 10036-8901 TELEPHONE: (212) 840-1070 FAX: (212) 302-2782

## **Scope of Work for NPCC Compliance Committee (CC)**

### Committee Mission

The NPCC Compliance Committee (CC) shall be charged with providing objective stakeholder policy input to the NPCC Compliance Monitoring and Enforcement Program (CMEP). The NPCC CMEP encompasses compliance monitoring, assessment and enforcement of NERC Reliability Standards, Regional Reliability Standards and NPCC Reliability Criteria. With regard to NERC Reliability Standards and Regional Reliability Standards, the CC shall provide an oversight role of the NPCC Compliance Staff's implementation of the CMEP. In this oversight role the CC will review and endorse the processes used by the NPCC Compliance Staff in the conduct of the CMEP. The CC shall be responsible for final approval of compliance assessments related to NPCC Reliability Criteria, which includes non-monetary sanction recommendations.

### Committee Functions

The Compliance Committee (CC) is charged with the following responsibilities related to the CMEP:

1. Review and approve NPCC Compliance Staff procedures for implementing the CMEP.
2. Review and endorse the processes used, by NPCC Compliance Staff, for noncompliance assessments and determination of sanctions consistent with the *ERO Sanctions Guidelines*, related to NERC and Regional Reliability Standards.
3. Provide final approval of compliance assessments done by NPCC Compliance Staff related to NPCC Reliability Criteria, including approval of non-monetary sanction recommendations.
4. Review and endorse annual NPCC Compliance Monitoring and Enforcement Program Implementation Plan as presented by NPCC Compliance Staff.
5. Review and endorse any proposed modifications or revisions to the NPCC Compliance Monitoring and Enforcement Program as presented by NPCC Compliance Staff or NERC.

6. Impanel the Hearing Body to resolve contested compliance and/or sanction and penalty determinations in accordance with the *NERC Hearing Procedure*, the *NPCC Hearing Procedure* and this scope.
7. Conduct annual evaluation of the NPCC Compliance Staff's implementation of the NPCC CMEP.
8. Oversee activities of any subcommittees, working groups or users groups that are formed.
9. Provide regular reports to the NPCC Board of Directors on all matters related to the NPCC Compliance Monitoring and Enforcement Program

### Committee Structure

The Committee shall have the same structure as the NPCC Board of Directors. The Committee will consist of representatives of the eight voting sectors as described in the *Amended and Restated Bylaws of Northeast Power Coordinating Council, Inc.*

The Committee will be chaired by the Assistant Vice President – Compliance, NPCC. The Committee will elect a vice chair from its members.

The Committee will be bound by the same quorum and voting rules applicable to the NPCC Board of Directors and described in the *Amended and Restated Bylaws of Northeast Power Coordinating Council, Inc.* while conducting Compliance Committee business, except in the case when it is acting as a Hearing Body. The Hearing Body will be bound by the rules as described below.

The Hearing Body will consist of five voting members of the Committee plus two alternates and business will always be conducted by five voting members as described in the *NPCC Hearing Procedure* (each member of the Hearing Body will be from a different voting sector). An independent Hearing Officer, who is not a member of the Compliance Committee, the NPCC Board, or NPCC Staff will conduct the hearing. Committee members who represent the Registered Entity involved in the Hearing cannot participate on the Hearing Body. The Hearing Body will utilize a simple majority vote to resolve issues. This voting rule, along with the structure of the Hearing Body, fully supports the requirement that no two stakeholder sectors may control, and no single stakeholder sector may veto, a matter before the Hearing Body.

**REDLINED VERSION OF  
REVISED NPCC COMPLIANCE COMMITTEE  
SCOPE OF WORK DOCUMENT**



NORTHEAST POWER COORDINATING COUNCIL, INC.  
1515 BROADWAY, NEW YORK, NY 10036-8901 TELEPHONE: (212) 840-1070 FAX: (212) 302-2782

## **Scope of Work for NPCC Compliance Committee (CC)**

### Committee Mission

The NPCC Compliance Committee (CC) shall be charged with providing objective stakeholder policy input to the NPCC Compliance Monitoring and Enforcement Program (CMEP). The NPCC CMEP encompasses compliance monitoring, assessment and enforcement of NERC Reliability Standards, Regional Reliability Standards and NPCC Reliability Criteria. With regard to NERC Reliability Standards and Regional Reliability Standards, the CC shall provide an oversight role of the NPCC Compliance Staff's implementation of the CMEP. In this oversight role the CC will review and endorse the processes used by the NPCC Compliance Staff in the conduct of the CMEP. The CC shall be responsible for final approval of compliance assessments related to NPCC Reliability Criteria, which includes non-monetary sanction recommendations.

### Committee Functions

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1. Review and approve NPCC Compliance Staff procedures for implementing the CMEP.
2. Review and endorse the processes used, by NPCC Compliance Staff, for noncompliance assessments and determination of sanctions consistent with the *ERO Sanctions Guidelines*, related to NERC and Regional Reliability Standards.
3. Provide final approval of compliance assessments done by NPCC Compliance Staff related to NPCC Reliability Criteria, including approval of non-monetary sanction recommendations.
4. Review and endorse annual NPCC Compliance Monitoring and Enforcement Program Implementation Plan as presented by NPCC Compliance Staff.
5. Review and endorse any proposed modifications or revisions to the NPCC Compliance Monitoring and Enforcement Program as presented by NPCC Compliance Staff or NERC.

- ~~6. Provide a pre-hearing forum for the resolution of contested compliance and/or sanction determinations.~~
- ~~76. In the event that contested compliance and/or sanction determinations cannot be resolved pre-hearing, i~~mpanel the Hearing Body to resolve contested compliance and/or sanction and penalty determinations in accordance with the *NERC Hearing Procedure*, [the NPCC Hearing Procedure](#) and [this scope](#).
- ~~87.~~ Conduct annual evaluation of the NPCC Compliance Staff's implementation of the NPCC CMEP.
- ~~9.8~~ Oversee activities of any subcommittees, working groups or users groups that are formed.
- ~~109.~~ Provide regular reports to the NPCC Board of Directors on all matters related to the NPCC Compliance Monitoring and Enforcement Program

### Committee Structure

The Committee shall have the same structure as the NPCC Board of Directors. The Committee will consist of representatives of the eight voting sectors as described in the *Amended and Restated Bylaws of Northeast Power Coordinating Council, Inc.*

The Committee will be chaired by the Assistant Vice President – Compliance, NPCC. The Committee will elect a vice chair from its members.

The Committee will be bound by the same quorum and voting rules applicable to the NPCC Board of Directors and described in the *Amended and Restated Bylaws of Northeast Power Coordinating Council, Inc.* while conducting Compliance Committee business, except in the case when it is acting as a Hearing Body. [The Hearing Body will be bound by the rules as described below.](#)

[The Hearing Body will consist of five voting members of the Committee plus two alternates and business will always be conducted by five voting members as described in the NPCC Hearing Procedure \(each member of the Hearing Body will be from a different voting sector\). An independent Hearing Officer, who is not a member of the Compliance Committee, the NPCC Board, or NPCC Staff will conduct the hearing. Committee members who represent the Registered Entity involved in the Hearing cannot participate on the Hearing Body. The Hearing Body will utilize a simple majority vote to resolve issues. This voting rule, along with the structure of the Hearing Body, fully supports the requirement that no two stakeholder sectors may control, and no single stakeholder sector may veto, a matter before the Hearing Body.](#)

[The Committee will select from its members a Hearing Body that will be charged with implementing the Hearing Process. The Hearing Body will be lead by an independent Hearing Officer, who is not a member of the Compliance Committee or the NPCC BOD.](#)



**DOCKET NOS. RR06-1-016/017 AND RR07-04-004**

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

**ATTACHMENT 5**

**REVISED AMENDED AND RESTATED DELEGATION AGREEMENT  
BETWEEN NERC AND  
RELIABILITYFIRST CORPORATION**

**ATTACHMENT 5A:  
CLEAN VERSION OF REVISED DELEGATION AGREEMENT**

**ATTACHMENT 5B:  
REDLINED VERSION OF REVISED RELIABILITYFIRST  
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM  
AND HEARING PROCEDURES**

**ATTACHMENT 5A:**

**CLEAN VERSION OF REVISED DELEGATION AGREEMENT**



320 SPRINGSIDE DRIVE, SUITE 300, AKRON, OH 44333  
TELEPHONE: (330) 456-2488 FACSIMILE: (330) 456-3648

February 17, 2009

Mr. Richard Sergel  
President  
North American Electric Reliability Corporation  
Princeton Forrestal Village  
116-390 Village Boulevard  
Princeton, New Jersey 08540-5721

Dear Rick:

A revised and amended Regional Delegation Agreement (RDA) between ReliabilityFirst Corporation and the North American Electric Reliability Corporation (NERC) is attached to this letter. We believe this new agreement appropriately responds to the directions and guidance given to us by the Federal Energy Regulatory Commission (Commission) when they approved our existing RDA with NERC on December 19, 2008. We will continue to operate and support NERC as the Electric Reliability Organization under the existing RDA until such time as the Commission approves the new one. At that time, we will be prepared to execute and operate under the new RDA.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim R. Gallagher".

Timothy R Gallagher  
President  
ReliabilityFirst Corporation

CC: ReliabilityFirst Board of Directors  
Steve Gray

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND RELIABILITYFIRST CORPORATION**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this \_\_\_ day of \_\_\_\_\_ 20XX, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the ReliabilityFirst Corporation (ReliabilityFirst), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and ReliabilityFirst may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

**WHEREAS**, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

**WHEREAS**, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter “Order 672”);

**WHEREAS**, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

**WHEREAS**, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

**WHEREAS**, the Act and Section 39.8 of the Commission’s regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as Reliability*First* provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

**WHEREAS**, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

**WHEREAS**, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

**WHEREAS**, Reliability*First* is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

**WHEREAS**, NERC will work through Reliability*First* to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

**WHEREAS**, NERC has concluded that Reliability*First* meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, NERC and Reliability*First*, agree as follows:

**1. Definitions.** The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to Reliability*First* to propose and enforce Reliability Standards pursuant to the Act.

(d) Reliability*First* Rules means the bylaws, a rule of procedure or other organizational rule or protocol of Reliability*First*.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

## 2. Representations.

(a) For purposes of its Delegated Authority, ReliabilityFirst hereby represents and warrants to NERC that:

(i) ReliabilityFirst is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. ReliabilityFirst is governed in accordance with its bylaws by a combination independent and balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any ReliabilityFirst decision and no single industry sector can veto any ReliabilityFirst decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**<sup>1</sup>, and as so attached are in full force and effect. No other such corporate governance documents are binding upon ReliabilityFirst.

(ii) As set forth in **Exhibit C** hereto<sup>2</sup>, ReliabilityFirst has developed a standards development procedure, which provides the process that ReliabilityFirst may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto<sup>3</sup>, ReliabilityFirst has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to ReliabilityFirst that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

---

<sup>1</sup> The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

<sup>2</sup> The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

<sup>3</sup> The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.

**3. Covenants.**

(a) During the term of this Agreement, ReliabilityFirst shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the ReliabilityFirst Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of ReliabilityFirst under this Agreement without first obtaining the consent of ReliabilityFirst, which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and ReliabilityFirst shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

**4. Delegation of Authority.**

(a) Based upon the representations, warranties and covenants of ReliabilityFirst in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to ReliabilityFirst for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, ReliabilityFirst shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.



**5. Reliability Standards.**

(a) In connection with its Delegated Authority, ReliabilityFirst shall be entitled to:

(i) propose Reliability Standards or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords ReliabilityFirst reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through ReliabilityFirst's process as set forth in **Exhibit C**. Proposals approved through ReliabilityFirst's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. ReliabilityFirst may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

**6. Enforcement.**

(a) In connection with its delegated authority pursuant to this Agreement, ReliabilityFirst shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and ReliabilityFirst agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. ReliabilityFirst may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, ReliabilityFirst agrees to comply with the NERC Rules in implementing this program.

(b) ReliabilityFirst shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and ReliabilityFirst shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by ReliabilityFirst shall be filed with NERC, in accordance with the NERC Rules.

(e) ReliabilityFirst shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) ReliabilityFirst shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, ReliabilityFirst shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review ReliabilityFirst's compliance enforcement program to ensure that: (i) the program

meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) ReliabilityFirst shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

**7. Delegation-Related Services.** NERC will engage ReliabilityFirst on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

**8. Funding.** ReliabilityFirst and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund ReliabilityFirst activities necessary for ReliabilityFirst to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon ReliabilityFirst without providing appropriate funding to carry out such mandates;

(b) ReliabilityFirst and NERC agree that costs of carrying out ReliabilityFirst's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is proposed by ReliabilityFirst

and approved by NERC and the Commission. If ReliabilityFirst proposes to use a formula other than net energy for load beginning in the following year, ReliabilityFirst shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and ReliabilityFirst to the Commission pursuant to 18 C.F.R. §39.4 for such year;

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide ReliabilityFirst with the form for budget submittal no later than April 30 of the prior year.

(e) ReliabilityFirst shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other ReliabilityFirst activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The ReliabilityFirst budget submission shall include supporting materials, including ReliabilityFirst's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. ReliabilityFirst shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(f) ReliabilityFirst's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve ReliabilityFirst's budget for meeting its responsibilities under the Delegation Agreement.

(h) ReliabilityFirst shall submit unaudited quarterly interim financial statements in a form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) ReliabilityFirst shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of ReliabilityFirst in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which ReliabilityFirst shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which ReliabilityFirst shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst.

**9. Assignment.** This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. ReliabilityFirst may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit ReliabilityFirst from contracting with other entities to assist it in carrying out its Delegated Authority, provided ReliabilityFirst retains control and responsibility for such Delegated Authority.

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the “Default Notice”). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years from the original effective date of May 2, 2007, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that ReliabilityFirst continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If ReliabilityFirst meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of ReliabilityFirst’s Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such

transition has been effected, unless the transition period exceeds one year, at which time ReliabilityFirst may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by ReliabilityFirst and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

**12. Limitation of Liability.** ReliabilityFirst and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and ReliabilityFirst shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the ReliabilityFirst's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that ReliabilityFirst or NERC is found liable for gross negligence or intentional misconduct, in which case ReliabilityFirst or NERC shall not be liable for any

indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

**13. No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

**15. Amendment.** Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.



**16. Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of ReliabilityFirst under this Agreement without first obtaining the consent of ReliabilityFirst, which consent shall not be unreasonably withheld or delayed. To the extent ReliabilityFirst does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of ReliabilityFirst under this Agreement, ReliabilityFirst shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by ReliabilityFirst to NERC and the Commission, or at such other time as may be mutually agreed by ReliabilityFirst and NERC.

**17. Dispute Resolution.** In the event a dispute arises under this Agreement between NERC and ReliabilityFirst, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

**18. Notice.** Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric  
Reliability Corporation  
116-390 Village Blvd.  
Princeton, NJ 08540-5721  
Attn: David Nevius  
Facsimile: (609) 452-9550

If to ReliabilityFirst:

ReliabilityFirst Corporation  
320 Springside Drive  
Suite 300  
Akron, OH 44333  
Attn: Timothy R. Gallagher  
Facsimile: (330) 456-3648

**19. Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

**20. Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

**21. Savings Clause.** Nothing in this Agreement shall be construed to preempt or limit any authority that ReliabilityFirst may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. **Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. **Execution of Counterparts.** This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

**NOW THEREFORE**, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

RELIABILITYFIRST  
CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Timothy R. Gallagher

Title: \_\_\_\_\_

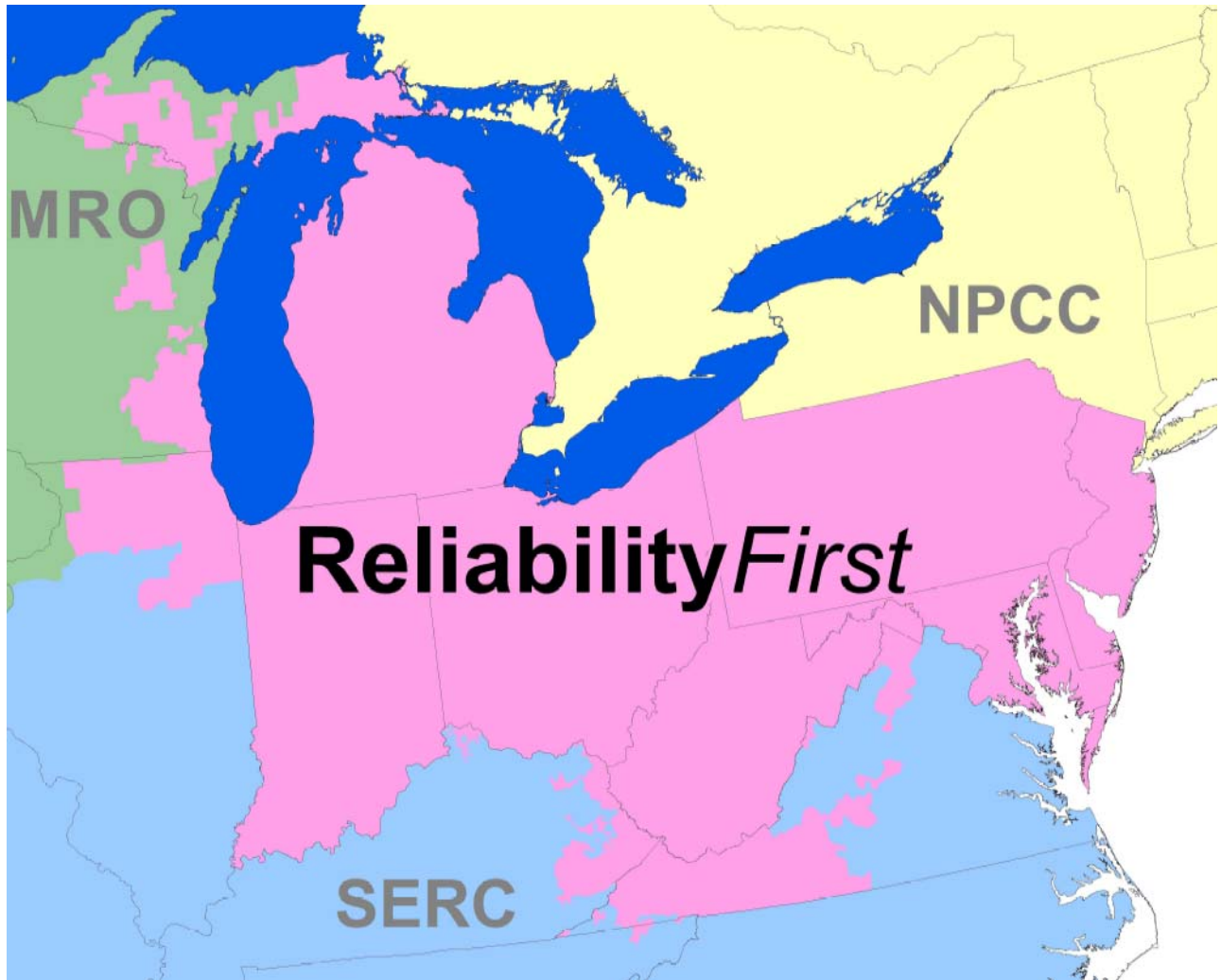
Title: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A - Boundaries of Delegation Agreement

The Boundaries of **ReliabilityFirst** Corporation (**ReliabilityFirst**) are defined by the service territories of Load Serving Entities (LSEs) and include all of New Jersey, Delaware, Pennsylvania, Maryland, District of Columbia, West Virginia, Ohio, Indiana, Lower Michigan and portions of Upper Michigan, Wisconsin, Illinois, Kentucky, Tennessee and Virginia as shown on the map below. In addition, transmission systems and generation within the metered boundaries of the LSEs are within **ReliabilityFirst** even if outside the respective service territories shown. The area is electrically contiguous.



Boundaries effective January 1, 2007

## Exhibit B – Governance

Exhibit B shall set forth the Regional Entity's bylaws and portions of the Standards Development Process as set out in Exhibit C, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

**CRITERION 1:** The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

**CRITERION 2:** The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

**CRITERION 3:** If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

**CRITERION 4:** The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

**CRITERION 5:** The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)



## **AMENDED AND RESTATED BYLAWS**

**OF**

### **Reliability*First* Corporation**

**a Delaware nonprofit corporation**

**Adopted December 19, 2006**

**Amended September 21, 2007<sup>1</sup>**

**Amended December 6, 2007<sup>2</sup>**

**Amended May 22, 2008<sup>3</sup>**

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<sup>1</sup> Section 5.9.2

<sup>2</sup> Sections 1.2, 1.26, 16.1

<sup>3</sup> Sections 1.12, 7.13, 7.14

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**AMENDED AND RESTATED  
BYLAWS OF  
ReliabilityFirst Corporation  
a Delaware nonprofit corporation  
(the “Corporation”)**

[As adopted by the Members on December 19, 2006,  
amended by the Board of Directors on September 21, 2007,  
amended by the Members on December 6, 2007  
and amended by the Board of Directors on May 22, 2008]

**ARTICLE I.  
DEFINITIONS**

Section 1.1. Act. “Act” shall mean Section 215 of the Federal Power Act (16 U.S.C. §824n).

Section 1.2. Adjunct Member. “Adjunct Member” shall mean any entity that does not qualify to join an Industry Sector but has been approved for membership. Adjunct Members may include Regulatory Participants.

Section 1.3. Affiliate. “Affiliate” shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity, as determined in the sole discretion of the Board of the Corporation. For this purpose, “control” may be presumed by the direct or indirect ownership of ten percent (10%) or more of the outstanding voting capital stock or other equity interests having ordinary voting power.

Section 1.4. Associate Member. “Associate Member” shall mean any entity that has joined an Industry Sector and is an Affiliate or Related Party of a Regular Member.

Section 1.5. Board. “Board” shall mean the Board of Directors of the Corporation.

Section 1.6. Bulk Power System. “Bulk Power System” shall mean facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and electric energy from generation facilities needed to maintain transmission system reliability, but does not include facilities used in the local distribution of electricity.

Section 1.7. Certificate of Incorporation. “Certificate of Incorporation” shall mean the Certificate of Incorporation of the Corporation filed with the Delaware Secretary of State, as from time to time amended.

Section 1.8. Commission. “Commission” shall mean the Federal Energy Regulatory Commission.

Section 1.9. Delegation Agreement. “Delegation Agreement” shall mean the delegation agreement, as supplemented or amended from time to time, between NERC and the Corporation pursuant to which NERC has delegated its authority to the Corporation to propose and enforce Reliability Standards within the Region.

Section 1.10. Electronic Transmission. “Electronic transmission” shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 1.11. ERO. “ERO” shall mean the electric reliability organization established under the Act to enforce Reliability Standards applicable to all owners, operators and users of the Bulk Power System in North America.

Section 1.12. Hearing Body. “Hearing Body” shall mean a group established with authority to conduct and render decisions in a formal compliance hearing of an entity registered in the NERC compliance registry who is the subject of a notice of alleged violation, proposed penalty or sanction, contested mitigation plan or contested remedial action directive.

Section 1.13. Industry Sector. “Industry Sector” shall mean a group of Bulk Power System owners, operators or users in the Region with substantially similar interests as pertinent to the purposes and operations of the Corporation of the Bulk Power System. The Industry Sectors shall consist of the following: (1) Suppliers, (2) Transmission Companies, (3) RTOs, (4) Small LSEs, (5) Medium LSEs, and (6) Large LSEs.

Section 1.14. Large LSEs. “Large LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 50,000 GWh or greater.

Section 1.15. Medium LSEs. “Medium LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region between 10,000 GWh and 50,000 GWh.

Section 1.16. Members. “Members” shall mean Regular Members, Associate Members and Adjunct Members.

Section 1.17. NERC. “NERC” shall mean the North American Electric Reliability Corporation, or any successor entity, which has been certified by the Commission as the ERO pursuant to the Act to establish and enforce Reliability Standards for the Bulk Power System.

Section 1.18. NERC Rules. “NERC Rules” shall mean the NERC Rules of Procedure as approved by the Commission.

Section 1.19. Net Energy for Load. “Net Energy for Load” shall mean net generation of an electric system plus energy received from others less energy delivered

to others through interchange. It includes system losses, but excludes energy required for storage of energy at energy storage facilities. Calculations of net energy for load for all purposes under these Bylaws shall be based on the most recent calendar year for which data on net energy for load of the Region is available.

Section 1.20. Person. “Person” shall mean a natural person, corporation, cooperative, partnership, association, or other private or public entity.

Section 1.21. Region. “Region” shall mean the geographic boundaries of the Corporation described in the Delegation Agreement.

Section 1.22. Regional Entity. “Regional Entity” shall mean any entity with which NERC has entered into a delegation agreement to delegate, or which the Commission or a governmental authority in Canada or Mexico has directly assigned, enforcement authority for reliability standards for the Bulk Power System in a defined geographic area of North America.

Section 1.23. Regional Variance. “Regional Variance” shall mean an aspect of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities. A Regional Variance may be used to qualify how a particular Regional Entity or Regional Entities achieves the objectives of a Reliability Standard or may establish different measures or performance criteria as necessary to achieve reliability within the particular Regional Entity or group of Regional Entities. A Regional Variance may not be inconsistent with any Reliability Standard as it would otherwise exist without the Regional Variance. Such a Regional Variance may be proposed by a Regional Entity and, if adopted by NERC and approved by the Commission, shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authority.

Section 1.24. Regional Reliability Standard. “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

Section 1.25. Regular Member. “Regular Member” shall mean any entity that has joined an Industry Sector that either (i) has no Affiliates or Related Parties that are Members or (ii) is the entity designated to be the Regular Member by any related group of Associate Members.

Section 1.26. Regulatory Participant. “Regulatory Participant” shall mean any state, District of Columbia or any provincial regulatory agency in the Region exercising authority over the rates, terms or conditions of electric service of an entity other than itself within the Region, or the planning, siting, construction or operation of electric facilities of an entity other than itself within the Region, as well as the Commission, regional advisory bodies that may be established by the Commission, or any federal

regulator or agency or any entity authorized by any state, the District of Columbia or any province to represent utility consumers.

Section 1.27. Related Party. “Related Party” shall mean, solely for purposes of the governance provisions of these Bylaws, any entity that is registered as part of another entity or is registered for other entities in the NERC Compliance Registry. For purposes of these Bylaws, a representative of a state or federal government agency shall not be deemed a Related Party with respect to each other, and a public body’s regulatory authority, if any, over a Member shall not be deemed to make it a Related Party with respect to that Member.

Section 1.28. Reliability Coordinator. “Reliability Coordinator” shall mean any entity that is recognized as a reliability coordinator by NERC in the Region that does not otherwise qualify as a Transmission Company or RTO.

Section 1.29. Reliability Standard. “Reliability Standard” shall mean a requirement to provide for Reliable Operation of the Bulk Power System, including, without limitation, the foregoing requirements for the operation of existing Bulk Power System facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the Bulk Power System, but shall not include any requirement to enlarge Bulk Power System facilities or to construct new transmission capacity or generation capacity.

Section 1.30. Reliable Operation. “Reliable Operation” shall mean operating the elements of the Bulk Power System within equipment and electric system thermal, voltage and stability limits so that instability, uncontrolled separation, or cascading failure of the Bulk Power System will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

Section 1.31. RTOs. “RTOs” shall mean PJM Interconnection L.L.C. and Midwest Independent Transmission System Operator, Inc., or such other entity that has been recognized by the Commission as a regional transmission operator or recognized functional equivalent in the Region.

Section 1.32. Small LSEs. “Small LSEs” shall mean (i) owners or operators of entities (or their representatives) that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 10,000 GWh or less, and (ii) end-use customers interconnected with the Bulk Power System with load of at least 100 MW at one location in the Region.

Section 1.33. Suppliers. “Suppliers” means owners or operators of electric generation connected to the transmission system and wholesale power marketers in the Region.

Section 1.34. Transmission Companies. “Transmission companies” means (i) owners (or those with ownership entitlement), planners and operators of transmission facilities included in the Bulk Power System in the Region and (ii) Reliability Coordinators.

ARTICLE II.  
PURPOSE AND ACTIVITIES

Section 2.1. Purpose. The business or purposes to be conducted or promoted by the Corporation are:

- (a) to be a Regional Entity and exercise enforcement authority for Reliability Standards for the Bulk Power System in the Region pursuant to the Delegation Agreement;
- (b) to carry out certain of NERC's activities that are in furtherance of NERC's responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules or the Delegation Agreement; and
- (c) to engage in any other lawful act or activity for which not for profit corporations may be organized under the Delaware General Corporation Law.

The Corporation shall be exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code") as an organization described in Section 501(c)(6) of the Code. The Corporation shall not engage directly or indirectly in any activity which would invalidate its status as an organization exempt from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(6) of the Code. No part of the net income to the Corporation shall inure to the benefit of or be distributed to its directors, officers, members or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered.

Section 2.2. Activities. In support and furtherance of its purpose, and in accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation's responsibilities shall include, but not be limited to, the following:

- (a) Reliability Standards. The Corporation shall:
  - (1) propose Reliability Standards, Regional Variances or modifications thereof to NERC; and
  - (2) develop Regional Reliability Standards through the Corporation's standards development procedure.
- (b) Enforcement. The Corporation shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the Region through the Corporation's compliance enforcement program.
- (c) Delegation-Related Services. The Corporation, on behalf of NERC, shall carry out certain of NERC's activities that are in furtherance of NERC's

responsibilities as the ERO under the Act or in support of delegated functions, including:

- (1) Organization registration and certification.
- (2) Reliability readiness audit and improvement.
- (3) Reliability assessment and performance analysis.
- (4) Training and education.
- (5) Situational awareness and infrastructure security.

(d) Budget. The Corporation shall prepare and submit a budget to NERC for the amount of costs the Corporation will incur in support of delegated functions that are in furtherance of NERC's responsibilities as the ERO under the Act.

(e) Non-delegated Functions. The Corporation may conduct such other activities for or on behalf of the Members that are not delegated to the Corporation by NERC under the Delegation Agreement if authorized by the Board and not inconsistent with the Act, NERC Rules, the Delegation Agreement or these Bylaws.

Section 2.3. Not-for-Profit Corporation. The Corporation is operated as a Delaware non-stock nonprofit corporation and is organized pursuant to the general corporation law of the State of Delaware.

### ARTICLE III. POWERS

Section 3.1. Powers. The Corporation shall have the power to engage in any lawful act or activity for which corporations may be organized under the general corporation law of the State of Delaware, subject to any limitations provided in applicable federal, provincial or state law or in the Certificate of Incorporation or these Bylaws.

### ARTICLE IV. OFFICES

Section 4.1. Principal Office. The principal office of the Corporation shall be located initially within the Region, at such location as the Board may from time to time determine, giving consideration to the total cost to the Corporation and convenience of travel for staff, Members and Regulatory Participants. Once established, the principal office may remain in its location, even if outside the Region.



## ARTICLE V. MEMBERS

Section 5.1. General. The terms and conditions of membership in the Corporation shall be as provided in the Certificate of Incorporation and these Bylaws if not inconsistent therewith. All Regular Members and Associate Members shall be required to join a single Industry Sector.

Section 5.2. Classes of Members. The Corporation shall have three (3) classes of Members: Regular Members, Associate Members and Adjunct Members.

5.2.1 Regular Members. Except as set forth in Section 7.4 of these Bylaws, Regular Members shall have the right to vote on all matters within their Industry Sector. Regular Members shall have all the rights and obligations of being a Member in the Corporation.

5.2.2 Associate Members. Associate Members shall not be entitled to vote within their Industry Sector or for any other purpose as a Member. Associate Members shall otherwise have all the rights and obligations of being a Member in the Corporation.

5.2.3 Adjunct Members. Adjunct Members shall not be entitled to vote for any purpose as a Member. Adjunct Members shall otherwise have all the rights of being a Member in the Corporation.

Section 5.3. Qualifications of Members. Any entity eligible to join an Industry Sector may be a Regular Member or Associate Member of the Corporation. Any entity not eligible to join an Industry Sector may be an Adjunct Member of the Corporation.

Section 5.4. Admission of Members. New Members may join the Corporation upon submittal of an application, in a form approved by the Board, and upon payment of such fees or charges, if any, as may be established by the Board or required by NERC. Each Regular Member and Associate Member shall designate the Industry Sector it wishes to join. A Regular Member and Associate Member may change its Industry Sector designation once each calendar year upon notice to the Corporation. Such notice must be provided to the Secretary of the Corporation at least sixty (60) days before an annual or other meeting of Members if the change is to be effective for such meeting. The President shall review a membership application and may request demonstration by the applicant that it qualifies for membership in a particular Industry Sector. Any dispute with respect to a Regular Member's or Associate Member's qualifications for a particular Industry Sector shall be resolved by the Board. The President shall have authority to approve an application for membership, subject to review by the Board.

Section 5.5. Voting Rights. Each Regular Member in good standing shall be entitled to one vote in the Industry Sector in which it belongs on all matters submitted to a vote of Members. The Board may suspend voting rights for a Regular Member delinquent by more than 60 days in payment of any penalties or because of the Regular Member's failure to meet other obligations to the Corporation. Except with respect to the election of Industry Sector directors as described elsewhere in the Certificate of

Incorporation and these Bylaws, matters properly brought before the Members at an annual or special meeting shall be acted upon by the Industry Sectors voting together as a single class. The vote of each Industry Sector shall be split into an affirmative component based on votes for the matter(s) presented, and a negative component based on votes against the matter(s) presented, in direct proportion to the votes cast within the Industry Sector for and against the matter presented, rounded to two decimal places. If authorized in advance by the Board, voting may be held electronically under such terms and conditions as are approved by the Board.

Section 5.6. Transfer of Membership. A Member of the Corporation may not transfer its membership or a right arising from it except to any Person succeeding to all or substantially all of the assets of the Member. If challenged, the President shall have authority to approve any such transfer, subject to review by the Board.

Section 5.7. Obligations of Members. By applying for and becoming a Regular or Associate Member of the Corporation, each Member agrees to comply with all Reliability Standards, all NERC standards and requirements, and the other obligations of Members of the Corporation set forth in these Bylaws or duly adopted by the Board in order to achieve the purposes of the Corporation. A Regular or Associate Member also agrees to obligate all of its Affiliates that have an impact on reliability in the Region to comply with all Reliability Standards and NERC standards and requirements. These obligations include but are not limited to: (a) obligations to provide data and information needed to perform the functions of the Corporation, (b) payment of any authorized penalties resulting from non-compliance with Reliability Standards, (c) in the case of Regular Members, electing the Board, and (d) providing qualified candidates to serve on organizational working groups. Adjunct Members agree to provide data and information needed to perform the functions of the Corporation.

Section 5.8. Withdrawal. A Member may withdraw from participation in the Corporation by providing written notice to the Corporation of such withdrawal. Such notice shall specify a date, not earlier than thirty (30) days from the date of notice, on which the withdrawal shall become effective; provided, however, that any such withdrawing Member shall remain liable to the Corporation for any dues or penalties or other obligations to the Corporation pursuant to Section 5.9 of these Bylaws.

Section 5.9. Funding and Dues.

5.9.1 NERC Funding. In accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation shall equitably allocate its dues, fees and other charges for the delegated functions conducted by the Corporation among all end users. The Corporation shall submit to NERC annually a list of all load-serving entities within the Region. NERC will bill all load-serving entities in the Region for the Corporation's costs for the delegated functions based on Net Energy for Load and be responsible for collection.

5.9.2 Application Fee, User-Fees and Other Charges. The Corporation may charge a nominal fee, which shall be determined by the President, for the submission of applications for membership. The Board of Directors may from time to time fix the amount of user-fees or other charges, if any, for activities that are not delegated to the Corporation by NERC under the Delegation Agreement and determine the methods of collection from entities that choose to participate in such activities.

Section 5.10. Penalties. If the Corporation initiates an investigation that leads to the imposition of a penalty, the Corporation shall receive any penalty monies that results from the investigation. All monies which the Corporation collects from the issuance of penalties shall be applied as a general offset to the Corporation's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the Corporation.

## ARTICLE VI. MEETING OF MEMBERS

Section 6.1. Annual Meeting of Members. The Members shall hold an annual meeting in December of each year, or at such other time specified by the Board. At the annual meeting of Members: (i) each Industry Sector shall elect the successor(s), if any, for any director(s) from their Industry Sector whose term will expire before the next annual meeting of the Members, provided however, that any Industry Sector may elect a successor director representing such Industry Sector prior to such annual meeting, in accordance with the provisions of this Article VI, in which case the election of such succeeding director(s) shall be reported to the Corporation at such annual meeting; (ii) the President and Treasurer shall report on the activities and financial condition of the Corporation; (iii) the Industry Sectors shall elect a slate of at-large and independent directors to fill vacancies or expiring terms; and (iv) the Industry Sectors shall consider and act upon such other matters as are consistent with the notice of the annual meeting. The failure to hold an annual meeting in accordance with these Bylaws shall not affect the validity of a corporate action.

Section 6.2. Special Meetings of Members. Special meetings of the Members may be called by six (6) directors on the Board, by the President, or by Members if at least ten percent (10%) of the Regular Members sign, date, and deliver to the President one or more written demands for a special meeting describing the purpose for which it is to be held. Within fifteen (15) days after receipt of a demand for a special meeting from Regular Members, the President shall cause a special meeting to be called and held on notice in accordance with Section 6.4 of these Bylaws. If the President fails to cause a special meeting to be called and held as required by this Section 6.2, a Regular Member making the demand may call the meeting by giving notice under Section 6.4. In either event, notice of the meeting and the costs of the meeting shall be at the expense of the Corporation. The business transacted at a special meeting is limited to the purposes stated within the notice of the meeting. Business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the Corporation, unless ninety percent (90%) of the Regular Members entitled to vote were present at such meeting or have waived notice of the meeting under Section 6.4.

Section 6.3. Location of Meetings of Members. Meetings of Members shall be held at a location designated by the President or the Board. If a Regular Member calls a meeting pursuant to Section 6.2, the Regular Members making the demand for the meeting may designate the location, provided the meeting must be held within the Region and in a facility of appropriate size to accommodate the Members.

Section 6.4. Notice of Meetings.

6.4.1 Notice Requirements. Notice of meetings of Members must be given at least five (5) days before the date of a meeting and not more than sixty (60) days before the date of a meeting. The notice must contain the date, time and place of the meeting, instructions for electronic attendance or voting, if applicable, and an agenda of the matters upon which action may be taken at the meeting. A matter may be added to the agenda of a meeting at the meeting upon the affirmative vote of three-quarters (3/4) of the Industry Sector votes cast on a motion to amend the agenda. If the meeting is an adjourned meeting and the date, time and place of the meeting were announced at the time of the adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed. Notice shall be deemed given by the Corporation to the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each Member's representative authorized pursuant to section 6.10.1

6.4.2 Waiver of Notice; Objections. A Member may waive notice of a meeting of Members. A waiver of notice by a Member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a Member at a meeting is a waiver of notice of that meeting, unless the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 6.5. Record Date. The Board may fix a date not more than sixty (60) days before the date of a meeting of Members as the date for the determination of the Members entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only Members on that date are entitled to notice and to vote at the meeting unless the Board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than sixty (60) days after the record date for determining Members entitled to notice of the original meeting.

Section 6.6. Right to Vote; Act of Members.

6.6.1 Industry Sector Voting. Voting of the Members shall be by Industry Sector, with each Industry Sector entitled to cast one vote. Each Member entitled to vote in an Industry Sector shall be entitled to cast one vote in its Industry Sector. The vote of each Industry Sector shall be split into an affirmative component based on votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast within the Industry Sector for and against the pending motion, rounded to two decimal places. To the extent practicable, all

Member votes may be held electronically under such terms and conditions as are approved by the Board.

6.6.2 Act of Members. If a quorum is present, except with respect to any matter described in Section 6.6.3, a majority of the Industry Sector votes cast on the matter shall be the act of the Members.

6.6.3 Special Voting Requirements. Notwithstanding any other provision of these Bylaws, and except as set forth in the Certificate of Incorporation and Section 13.2 of these Bylaws, two-thirds (2/3) of the Industry Sector votes cast shall be required to:

(a) Amend the Bylaws, except as otherwise provided in Section 19.1 of these Bylaws. The substance of the proposed amendment must be contained in the notice of the meeting at which the vote will be taken; however, the Members may modify a proposed Bylaw amendment at the meeting.

(b) Approve any proposal to terminate the Corporation.

Section 6.7. Quorum. A quorum for a meeting of Members is a majority of the Regular Members entitled to vote in each Industry Sector at the meeting. A quorum for a meeting of an Industry Sector is a majority of the Regular Members of that Industry Sector entitled to vote at the meeting. In both cases, electronic participation is acceptable if authorized by the Board. A quorum is necessary for the transaction of business at a meeting of Members or of any Industry Sector. If a quorum is not present, a meeting may be adjourned for that reason by the Industry Sectors or Regular Members then represented or present.

Section 6.8. Action by Written Ballot. An action that may be taken at a regular or special meeting of Members may be taken without a meeting if the Corporation mails or delivers a written ballot to every Regular Member entitled to vote on the matter. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Solicitations for votes by written ballot must: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve the matter; (iii) specify the time by which a ballot must be received by the Corporation in order to be counted; and (iv) may not be revoked once received.

Section 6.9. Action by Electronic Communication. Any vote of an Industry Sector to elect a director or for any other purpose may be taken by electronic means without a meeting or during a meeting. In addition, a conference among Members by a means of communication through which the participants may simultaneously hear each other during the conference is a meeting of the Members, if the same notice is given of the conference as would be required for a meeting and if the number of persons participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting. A Member may participate in a meeting of the

Members by a means of communication through which the Member, other persons participating, and all persons physically present at the meeting may simultaneously communicate with each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.

#### Section 6.10. Member Representatives; Proxies.

6.10.1 Designation of Representative. Each year prior to the annual meeting of Members, each Regular Member shall designate the individual authorized to vote on Corporation matters on behalf of the Member, in accordance with procedures approved by the Board. A Regular Member may change such designation at any time by providing at least twenty-four (24) hour written notice to the Secretary of the Corporation. Such notice may be provided by electronic transmission.

6.10.2 Authorization. The individual designated to vote by a Regular Member may appoint a proxy to vote or otherwise act for the Regular Member at any meeting or by electronic transmission by signing an appointment form either personally or by an attorney so designated by the Regular Member.

6.10.3 Effective Period. An appointment of a proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes. An appointment is valid for the next regular or specially scheduled meeting or ballot by electronic transmission. However, a proxy is not valid for more than sixty (60) days from its date of execution.

6.10.4 Revocation. An appointment of a proxy is revocable by a Regular Member. Appointment of a proxy is revoked by the person appointing the proxy either by open declaration at a meeting or by signing and delivering a written revocation to the Secretary or other officer or agent authorized to tabulate proxy votes. This may be done either in a written statement that the appointment of the proxy is revoked or by a subsequent appointment that shall serve to cancel all prior proxies.

Section 6.11. Public Notice of Member Meetings. Notice to the public of the dates, times and places of meetings of the Members, and all nonconfidential material provided to the Members, shall be posted on the Corporation's website at approximately the same time that notice is given to the Members. Meetings of the Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

Section 6.12. Posting of Minutes. Minutes of meetings of Members shall be posted on the Corporation's website when available.

Section 6.13. Reimbursement of Member Expenses. The Corporation will be under no obligation to reimburse Members for expenses associated with their attendance at regular or special Member meetings.

ARTICLE VII.  
BOARD OF DIRECTORS

Section 7.1. General. The composition of the Board and the terms of office of the directors, the manner of their nomination, election or appointment, and other terms and conditions of their service, shall be as provided in the Certificate of Incorporation and these Bylaws if not inconsistent therewith.

Section 7.2. Management of Corporation. The business of the Corporation shall be managed under the direction of the Board. Specific functions of the Board shall include, but not be limited to:

- (a) govern the Corporation and oversee all of its activities;
- (b) establish and oversee all organizational groups;
- (c) approve, revise and enforce Reliability Standards utilizing a fair, open, balanced and inclusive process;
- (d) establish compliance monitoring procedures and requirements, and penalties and sanctions for non-compliance consistent with applicable NERC Rules;
- (e) impose penalties and sanctions consistent with the NERC Rules and the procedures approved by the Board;
- (f) establish and approve an annual budget for submission to NERC;
- (g) hire the Corporation's president and approve his or her salary;
- (h) annually at the first regular Board meeting following the annual meeting of Members, elect a Chair ("Chair") and a vice-chair from among the directors on the Board; and
- (i) establish Board committees as appropriate.

Section 7.3. Voting. Each director shall have one vote with respect to decisions of the Board.

Section 7.4. Composition of the Board. Effective as of the date of the first annual meeting of Members:

- (a) The Board shall consist of fourteen (14) directors.
- (b) Eight directors shall be elected by the Industry Sectors as follows:
  - (i) Suppliers shall elect two (2) directors;
  - (ii) Transmission Companies shall elect two (2) directors;

- (iii) RTOs shall select one (1) director;
- (iv) Small LSEs shall elect one (1) director;
- (v) Medium LSEs shall elect one (1) director; and
- (vi) Large LSEs shall elect one (1) director.

(c) Three (3) directors shall be at-large. At-large directors shall be elected by all of the Industry Sectors voting together as a single class.

(d) Three (3) directors shall be independent from the Corporation and any Member or any Affiliate or Related Party of any Member. Independent directors shall be elected by all of the Industry Sectors voting together as a single class.

(e) Industry Sectors shall elect their respective sector and at-large directors from among individuals holding senior management positions in Member organizations. Any sector-elected or at-large director whose Member organization changes Industry Sectors or who ceases to hold a senior management position in a Member organization shall continue to serve out his or her remaining term, unless such director resigns or is removed. When selecting at-large directors, Industry Sectors shall consider such factors as the geographic and functional representation of the Board. No two directors may be employees of a single Member or any Affiliate or Related Party of a Member or any Affiliate.

(f) An independent director is a person (i) who is not an officer or employee of the Corporation, an officer, director, or employee of a Member, or an officer, director or employee of any entity that would reasonably be perceived as having a direct financial interest in the outcome the Board's decisions, or (ii) who does not have a relationship that would interfere with the exercise of independent judgment in carry out the responsibilities of a director. The Board may adopt additional standards for director independence not inconsistent herewith.

(g) At-large and independent directors shall be nominated by the nominating and governance committee of the Board. The nominating and governance committee shall seek out for nomination independent directors from diverse backgrounds, who will contribute to the effective functioning of the Board and the Corporation by bringing a broad range of industry expertise, viewpoints, experiences, skill sets and knowledge. The nominating and governance committee will establish procedures to ensure that diverse candidates are in the pool of applicants for every independent director position and will retain an independent consultant to prepare a list of individuals qualified and willing to serve as independent directors.

(h) Any director which the full Board has determined has a conflict of interest on any compliance or enforcement matter brought before the Board shall not vote on such matter and shall recuse himself or herself from all Board deliberations concerning such matter.



- (i) There will be no alternates or proxies for directors.

Section 7.5. Terms of Directors. The directors will be divided into three classes. The term of office of the first class will expire at the second annual meeting of Members; the term of office of the second class will expire one year thereafter; and the term of office of the third class two years thereafter. At each annual meeting of Members, directors shall be chosen for a three year term to succeed those whose term expires. The directors for each class will be selected by lot at the first annual meeting of directors, provided that no two at-large directors, no two independent directors and no two directors of the same Industry Sector shall be in the same class. Each director shall hold office until (a) the expiration of the term for which he or she was elected and until his or her successor is elected and qualified, or (b) his or her earlier death, resignation or removal. Any director may be removed at any time by the affirmative vote of two-thirds of the Industry Sector or Industry Sectors, as applicable, electing such director. A director may be removed by the Board for non-attendance at three consecutive Board meetings.

Section 7.6. Reimbursement. Independent directors shall have the right to reimbursement by the Corporation of their actual reasonable travel expenses to Board meetings or when specifically selected to represent the Corporation at a business meeting. The directors elected by the Industry Sectors and the at-large directors shall not be reimbursed by the Corporation for any expenses, unless specifically approved in advance by resolution of the Board.

Section 7.7. Resignations; Vacancies.

(a) Resignations. A director may resign at any time from the Board by submitting a written resignation to the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation.

(b) Vacancies. If an Industry Sector or at-large director resigns, dies or otherwise becomes incapacitated or is removed during the term of office for which elected, the directorship shall thereupon be vacant and shall be filled by the Industry Sector or Industry Sectors, as applicable, by written or electronic ballot in accordance with the procedures and requirements set forth above. The successor director elected by the Industry Sector shall hold office for the unexpired term of the vacated directorship replaced. If an independent director ceases to be independent, as determined by the Board, his or her directorship shall thereupon be vacant and may be filled by the Board until the next annual meeting of Members, at which time a permanent successor shall be elected by the Industry Sectors for the remainder of the unexpired term.

Section 7.8. Meetings; Notice; Waiver.

(a) Meetings. An annual meeting of the Board shall be held without notice immediately following the annual meeting of the Members. The Board shall elect the Chair and Vice-Chair for the next year at the annual meeting. In addition, regular meetings may be held at such time or times as fixed by the Board. Special meetings of the Board may be called by the Board's Chair, the

President or by any three directors and shall be held at the principal office of the Corporation, or such other place within the Region as determined by the Chair or the President after consultation with the Board.

(b) Notice. Notice of the dates, times, and places of all regular and special meetings of the Board shall be published by the Secretary and provided to all directors and Members not less than three (3) days prior to the date of the meeting. Notice shall be deemed given by the Corporation to directors and the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each director and each Member's representative authorized pursuant to section 6.10.1.

(c) Waiver. Any person entitled to notice of a regular or special meeting of the Board may waive notice thereof. A waiver of notice by a person entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting of the Board is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 7.9. Quorum. For the Board to take action at a meeting, a quorum of directors must be present. A quorum is a majority of the directors then in office, provided that: (a) if there are three independent directors holding office, two independent directors must be present to constitute a quorum, or (b) if there are two independent directors holding office, one independent director must be present to constitute a quorum. If there is only one independent director or no independent directors holding office, there is no requirement that an independent director be present in order for the Board to have a quorum. In the absence of a quorum, a majority of the directors present may adjourn a meeting, without notice, except as may be given at such meeting, until a quorum is present.

Section 7.10. Board Action. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law or these Bylaws.

Section 7.11. Action Without a Meeting. Any action required or permitted to be taken at a Board meeting or any committee thereof may be taken by written action, signed by all of the directors of the Board or members of the committee, as the case may be. The written action is effective when signed by the directors unless a different effective time is provided in the written action. Any nonconfidential material provided to the Board or a committee in connection with such written action shall be posted on the Corporation's website at approximately the same time that it is given to the Board or the committee. Written actions shall be filed with the minutes of the Corporation and the results of such written action shall be promptly posted on the Corporation's website.

Section 7.12. Action by Electronic Communication. A conference among directors by a means of communication through which the directors may simultaneously hear each other during the conference is a Board meeting if the same notice is given of the conference as would be required for a meeting and if the number of directors participating in the conference is a quorum. Participation in a meeting by this means constitutes personal presence at the meeting. A director may participate in a Board meeting by any means of communication through which the director, other directors participating, and all directors physically present at the meeting may simultaneously communicate with each other during the meeting.

Section 7.13. Board Committees. The Board shall have an audit committee, compensation committee, nominating and governance committee and compliance committee, and such other committees the Board deems necessary and appropriate. Each committee shall be comprised of not less than three directors. The compliance committee shall be comprised of five directors, a majority of whom are independent directors. The Board may require that a minimum number of independent directors serve on each of these committees. The Board shall have the power to appoint, and to delegate authority to, such committees of the Board as it determines to be appropriate from time to time. The Board may require any committee to adopt a charter, subject to approval by the Board, governing the activities and authority of the committee and the composition of its members.

Section 7.14. Hearing Body. The Hearing Body shall consist of the Board compliance committee.

7.14.1 Quorum. For the Hearing Body to take action at a hearing, a quorum of members must be present. A quorum is a majority of members of the Hearing Body, provided that two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum, provided that the requirement that at least two independent directors are present for a quorum shall at all times continue to be met. Such new member shall serve on the Hearing Body for purposes of the subject hearing through the conclusion of the hearing but not thereafter.

7.14.2 Voting. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present.

Section 7.15. Public Notice of Board Meetings. Notice to the public of the dates, times and places of Board meetings, including committees thereof, and all nonconfidential material provided to the Board or the committees, shall be posted on the Corporation's website, and notice of Board and committee meetings shall be sent by electronic transmission to Members, at approximately the same time that notice is given to the Board or the committee, as the case may be. Board and committee Meetings shall be open to all Members and the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that any meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not

limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

Section 7.16. Posting of Minutes. Minutes of Board and committee meetings shall be posted on the Corporation's website when available.

Section 7.17. Compensation of Directors. The directors elected by the Industry Sectors and the at-large directors shall not receive compensation for their service to the Corporation as directors on the Board. The independent directors shall be entitled to such compensation as the Board may from time to time determine. Nothing contained in these Bylaws shall preclude any director from receiving compensation for services to the Corporation in any other capacity.

## ARTICLE VIII. ORGANIZATIONAL GROUPS

Section 8.1. Establishment of Organizational Groups. The Board shall establish such organizational groups, consisting of committees, sub-committees, task forces and working groups of Members, as are necessary and appropriate to accomplish the purposes of the Corporation in an efficient and cost-effective manner. All organizational groups shall be subject to the direction and control of the Board. The membership of organizational groups shall be determined based upon experience, expertise and geographic diversity and to the extent practicable shall include balanced representation of the Industry Sectors. The Board shall establish policies and procedures governing the creation of organizational groups, how they are populated, how voting and related matters are conducted, how they may be reorganized and the direction and termination of such groups. The Board shall conduct a review of all organizational groups of the Corporation on an annual basis to ensure that the business of the Corporation is conducted in an efficient, cost-effective manner.

Section 8.2. Reimbursement. The Board may authorize reimbursement for persons acting on behalf of the Corporation, as necessary in the interests of the Corporation.

## ARTICLE IX. OFFICERS

Section 9.1. Officers. The officers of the Corporation shall include a President, one or more Vice Presidents, a Secretary, a Treasurer and any other officers as may be elected or appointed in accordance with the provisions of this Article. The Board may elect or appoint any additional officers that it deems desirable, such other officers to have the authority and perform the duties prescribed by the Board. The same individual may hold any number of offices, except that of President.

Section 9.2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board. Each officer shall hold office at the pleasure of the Board. If the election of officers is not held at such

meeting, such election shall be held as soon thereafter as is convenient. New officers may be created and the positions filled at any meeting of the Board. Each elected officer shall hold office until his or her successor has been duly elected and qualified or upon his or her earlier resignation or removal.

Section 9.3. Removal. Any officer elected by the Board may be removed by the affirmative vote of two-thirds (2/3) of the Board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 9.4. Vacancies. A vacancy in any office because of death, incapacity, resignation, removal, disqualification, or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 9.5. President. The President shall:

- (a) be the principal executive and operating officer of the Corporation;
- (b) sign certificates of membership, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation; and
- (c) perform all duties incident to the office of President, including hiring and directing staff, and such other duties as may be prescribed by the Board from time to time.

Section 9.6. Vice Presidents. The Vice President(s) shall perform such duties and have such powers as the Board or President may from time to time prescribe. At the request of the Board, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 9.7. Secretary. The Secretary shall ensure that the following duties are carried out:

- (a) the minutes of the meetings of the Members and of the Board, and each committee thereof, are recorded;
- (b) all required notices are duly given in accordance with these Bylaws and as required by law;
- (c) a register of the current names and addresses of all Members is maintained and posted on the Corporation's website;

(d) a complete copy of the Certificate of Incorporation and Bylaws of the Corporation containing all amendments thereto are kept on file at all times and posted on the Corporation's website, which copies shall always be open to the inspection of any Member; and

(e) generally perform all duties incident to the office of Secretary and such other duties as may be prescribed by the Board from time to time.

Section 9.8. Treasurer. The Treasurer shall be responsible for the following activities:

(a) maintain custody of all funds and securities of the Corporation;

(b) receipt of and the issuance of receipts for all monies due and payable to the Corporation and for deposit of all such monies in the name of the Corporation in such bank or banks or financial institutions as shall be selected by the Board; and

(c) generally perform all duties incident to the office of Treasurer and such other duties as may be prescribed by the Board from time to time.

#### ARTICLE X. CERTIFICATES OF MEMBERSHIP

Section 10.1. Certificates of Membership. The Board may, but need not, provide for the issuance of certificates evidencing membership in the Corporation, which certificates shall be in such form as may be determined by the Board.

#### ARTICLE XI. BOOKS AND RECORDS

Section 11.1. Books and Records; Financial Statements. The Corporation shall keep at such office selected by the Board correct and complete copies of its Certificate of Incorporation and Bylaws, accounting records, and minutes of meetings of Members, Board, and committees having any of the authority of the Board. A Member, or the agent or attorney of a Member, may inspect all books and records for any proper purpose at any reasonable time. Upon request, the Corporation shall give the Member a statement showing the financial result of all operations and transactions affecting income and expenses during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.

#### ARTICLE XII. FISCAL YEAR

Section 12.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

ARTICLE XIII.  
TRANSFER OF ASSETS

Section 13.1. Member Approval Not Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation, by affirmative vote of the Board, may sell, lease, transfer, or dispose of its property and assets in the usual and regular course of its activities and grant a security interest in all or substantially all of its property and assets in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient, in which case no Member approval is required.

Section 13.2. Member Approval Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient only when approved at a regular or special meeting of the Members by the affirmative vote of two-thirds (2/3) of all the Members. Notice of the meeting must be given to the Members. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the Corporation.

ARTICLE XIV.  
CONTRACTS, CHECKS, DEPOSITS, AND GIFTS

Section 14.1. Contracts. The Board may authorize any officer or officers or agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or may be confined to specific instances.

Section 14.2. Checks, Drafts, or Orders. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, may be signed by such officer or officers or agent or agents of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board.

Section 14.3. Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 14.4. Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for any purpose of the Corporation.

ARTICLE XV.  
INSURANCE, LIMITATION ON LIABILITY AND INDEMNIFICATION

Section 15.1. Insurance. The President is authorized to procure insurance to protect the Corporation against damages arising out of or related to any directive, order, procedure, action or requirement of the Corporation.

Section 15.2. Limitations on Liability. As provided in Article Fourteenth of the Certificate of Incorporation, a director of the Corporation shall not be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of Article Fifteenth of these Bylaws by the Members of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

Section 15.3. Right to Indemnification.

15.3.1 Indemnified Persons. Each person who was or is made a party or is threatened to be made a party to or is involved in or called as a witness in any Proceeding because he or she is an Indemnified Person shall be indemnified and held harmless by the Corporation to the fullest extent permitted under the Delaware General Corporation Law (the "DGCL"), as the same now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment). Such indemnification shall cover all expenses incurred by an Indemnified Person (including, but not limited to, attorneys' fees and other expenses of litigation) and all liabilities and losses (including, but not limited to, judgments, fines, ERISA or other excise taxes or penalties and amounts paid or to be paid in settlement) incurred by such person in connection therewith.

15.3.2 Denial of Authorization for Certain Proceedings. Notwithstanding anything to the contrary in this Section 15.3, except with respect to indemnification of Indemnified Persons specified in paragraph 15.3.3 of this Section 15.3, the Corporation shall indemnify an Indemnified Person in connection with a Proceeding (or part thereof) initiated by such person only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of notice thereof from such Indemnified Person.

15.3.3 Certain Defined Terms. For purposes of this Section 15.3, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):



(1) a “Proceeding” is any investigation, action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom.

(2) an “Indemnified Person” is a person who is, was, or had agreed to become a Director of the Corporation (including, in the case of such person seeking indemnification while serving as a Director who is or was an officer of the Corporation, such person in his capacity as an officer.)

**15.3.4 Expenses.** Expenses, including attorneys’ fees, incurred by a person indemnified pursuant to paragraph 15.3.1 in defending or otherwise being involved in a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding, including any appeal therefrom, upon receipt of an undertaking (the “Undertaking”) by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation; provided that in connection with a Proceeding (or part thereof) initiated by such person, except a Proceeding authorized by paragraph 15.3.5, the Corporation shall pay said expenses in advance of final disposition only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of a request for such advancement accompanied by the Undertaking. A person to whom expenses are advanced pursuant hereto shall not be obligated to repay such expenses until the final determination of any pending Proceeding in a court of competent jurisdiction concerning the right of such person to be indemnified or the obligation of such person to repay such expenses.

**15.3.5 Protection of Rights.** If a claim by an Indemnified Person under paragraph 15.3.1 is not promptly paid in full by the Corporation after a written claim has been received by the Corporation or if expenses pursuant to paragraph 15.3.4 have not been promptly advanced after a written request for such advancement by an Indemnified Person (accompanied by the Undertaking required by paragraph 15.3.4) has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or the advancement of expenses. If successful, in whole or in part, in such suit, such claimant shall also be entitled to be paid the reasonable expense thereof. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the Undertaking has been tendered to the Corporation that indemnification of the claimant is prohibited by law, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, independent legal counsel, or the Members) to have made a determination, if required, prior to the commencement of such action that indemnification of the claimant is proper in the circumstances, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the Members) that indemnification of the claimant is prohibited, shall be a defense to the action or create a presumption that indemnification of the claimant is prohibited.

#### 15.3.6 Miscellaneous.

(a) Non-Exclusivity of Rights. The rights conferred on any person by this Section 15.3 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote of Members or disinterested directors or otherwise. The Board shall have the authority, by resolution, to provide for such other indemnification of directors, and such indemnification of officers, delegates, employees, agents, or others of the Corporation as it shall deem appropriate.

(b) Insurance, contracts, and funding. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, delegate or agent of the Corporation against any expenses, liabilities or losses, whether or not the Corporation would have the power to indemnify such person against such expenses, liabilities or losses under the DGCL. The Corporation may enter into contracts with any director, officer, or employee of the Corporation in furtherance of the provisions of this Section 15.3 and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect the advancing of expenses and indemnification as provided in such contracts or as otherwise provided in this Section 15.3.

(c) Contractual nature. The provisions of this Section 15.3 shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person. This Section 15.3 shall be deemed to be a contract between the Corporation and each person who, at any time that this Section 15.3 is in effect, serves or agrees to serve in any capacity which entitles him to indemnification and advancement of expenses hereunder and any repeal or other modification of this Section 15.3 or any repeal or modification of the DGCL or any other applicable law shall not limit any rights of indemnification for Proceedings then existing or arising out of events, acts or omissions occurring prior to such repeal or modification, including, without limitation, the right to indemnification and advancement of expenses for Proceedings commenced after such repeal or modification to enforce this Section 15.3 with regard to Proceedings arising out of acts, omissions or events arising prior to such repeal or modification.

(d) Cooperation. Each Indemnified Person shall cooperate with the person, persons or entity making the determination with respect to such Indemnified Person's entitlement to indemnification under this Section 15.3, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to such Indemnified Person and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by such Indemnified Person in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to such Indemnified Person's entitlement to indemnification) and the

Corporation hereby indemnifies and agrees to hold such Indemnified Person harmless therefrom.

(e) Subrogation. In the event of any payment under this Section 15.3 to an Indemnified Person, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of such Indemnified Person, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

(f) Severability. If this Section 15.3 or any portion hereof shall be invalidated or held to be unenforceable on any ground by any court of competent jurisdiction, the decision of which shall not have been reversed on appeal, this Section 15.3 shall be deemed to be modified to the minimum extent necessary to avoid a violation of law and, as so modified, this Section 15.3 and the remaining provisions hereof shall remain valid and enforceable in accordance with their terms to the fullest extent permitted by law.

#### ARTICLE XVI. TRANSITION

Section 16.1. Transition Standards. The Corporation will use the existing standards, criteria, rules or guides from each existing reliability council region for those Members that join the Corporation as in effect immediately prior to formation of the Corporation until such standards, criteria, rules or guides are adopted, superseded, or rejected by the Corporation. The Corporation will establish any necessary transition committees, subcommittees, working groups or task forces to administer the existing regional reliability standards, criteria, rules and guides until they are adopted, superseded, or rejected by the Corporation. The Corporation will employ its best efforts, within two (2) years of its formation, to work toward a uniform set of Reliability Standards for the entire Region. The Board will develop and implement a standards process and a plan for transition to new Reliability Standards. This process will include a requirement that two-thirds of the directors present at a meeting must vote to adopt new Reliability Standards.

#### ARTICLE XVII. PARTICIPATION BY REGULATORY PARTICIPANTS

Section 17.1. Regulatory Participants. All Regulatory Participants shall be entitled to and be provided with the same rights to notice of and participation in meetings or other activities of the Corporation as are provided to Members, but shall not have the right to vote.

#### ARTICLE XVIII. BUDGET AND BUSINESS PLAN

Section 18.1. Budget and Business Plan. Each annual budget and business plan of the Corporation shall be approved by the Board in sufficient time in each fiscal year to allow for timely submittal of the approved annual budget and business plan to

NERC in accordance with the NERC Rules. The Corporation shall post a draft of each budget and business plan on the Corporation's website for purposes of review and comment by the Members at least ten (10) days prior to the Board meeting at which the budget and business plan are to be approved.

ARTICLE XIX.  
AMENDMENT OF BYLAWS

Section 19.1. Amendment Of Bylaws. The power to adopt, amend or repeal these Bylaws is vested in the Members as set forth in Section 6.6.3 of these Bylaws; provided, however, that upon the passage of any federal electric reliability legislation, and/or the adoption of any rules or regulations of the Commission, NERC or other governmental entity with jurisdiction, the Board shall have authority to amend these Bylaws as necessary and appropriate to comply with such law, legislation, rules and regulations.

## Exhibit C – Regional Standard Development Procedure

**Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:**

### **COMMON ATTRIBUTE 1**

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the. No regional reliability standard shall be effective within the [Regional Entity Name] area unless filed by NERC with FERC and approved by FERC.

### **COMMON ATTRIBUTE 2**

[Regional Entity Name] regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A [Regional Entity Name] reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

### **COMMON ATTRIBUTE 3**

[Regional Entity Name] regional reliability standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the [Regional Entity Name] area, regardless of membership in the region.

### **COMMON ATTRIBUTE 4**

**Requester** — The requester is the sponsor of the regional reliability standard request may assist in the development of the standard. Any member of [Regional Entity Name], or group within [Regional Entity Name] shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the [Regional Entity Name] area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

### **COMMON ATTRIBUTE 5**

**[Standards or other named] committee** — The [Regional Entity Name] [standards] committee manages the standards development process. The [standards] committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the [Regional Entity Name] board on standards presented for adoption.

### **COMMON ATTRIBUTE 6**

*[Alternative 6A: For an RE that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee is a balanced stakeholder committee, inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system. [The [standards] committee votes to approve standards.] See Appendix A for the representation model of the [standards] committee.

*[Alternative 6B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]*

**[Registered ballot body]** — The registered ballot body comprises all entities or individuals that a) qualify for one of the stakeholder segments; are registered with [Regional Entity Name] as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

### **COMMON ATTRIBUTE 7**

[Regional Entity Name] will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the [Regional Entity Name] and NERC websites.

### **COMMON ATTRIBUTE 8**

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

### **COMMON ATTRIBUTE 9**

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

### **COMMON ATTRIBUTE 10**

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

### **COMMON ATTRIBUTE 11**

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the [Regional Entity Name] website within [no greater than 30] days of acceptance by the committee.

### **COMMON ATTRIBUTE 12**

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

### **COMMON ATTRIBUTE 13**

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the [Regional Entity Name] website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to [Regional Entity Name] stakeholders and other potentially interested entities, both within and outside of the [Regional Entity Name] area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

### **COMMON ATTRIBUTE 14**

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the [Regional Entity Name] website no later than the next posting of the proposed standard.

### **COMMON ATTRIBUTE 15**

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

### **COMMON ATTRIBUTE 16**

The standards process manager shall schedule a vote by the [Regional Entity Name] [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

### **COMMON ATTRIBUTE 17**

[Alternative 17A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards] committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

[Alternative 17B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

The [Regional Entity Name] registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

### **COMMON ATTRIBUTE 18**

[Alternative 18A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard.

[Alternative 18B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

All members of [Regional Entity Name] are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

### **COMMON ATTRIBUTE 19**

[Alternative 19A: For an RE that chooses to vote using a balanced stakeholder committee.]

Actions by the committee shall be recorded in the regular minutes of the committee.

[Alternative 19B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

### **COMMON ATTRIBUTE 20**

Under no circumstances may the board substantively modify the proposed regional reliability standard.

### **COMMON ATTRIBUTE 21**

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada and Mexico.]

### **COMMON ATTRIBUTE 22**

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the [Regional Entity Name] bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in [Regional Entity Name], and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the [Regional Entity Name] members and others.

### **COMMON ATTRIBUTE 23**



- **Balanced** - The [Regional Entity Name] standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

#### **COMMON ATTRIBUTE 24**

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the [Regional Entity Name] area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

#### **COMMON ATTRIBUTE 25**

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

#### **COMMON ATTRIBUTE 26**

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

#### **COMMON ATTRIBUTE 27**

- Does not unnecessarily delay development of the proposed reliability standard.

#### **COMMON ATTRIBUTE 28**

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

#### **COMMON ATTRIBUTE 29**

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

#### **COMMON ATTRIBUTE 30**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

### **COMMON ATTRIBUTE 31**

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

### **COMMON ATTRIBUTE 32**

<b>Applicability</b>	<p>Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.</p> <p>If not applicable to the entire [Regional Entity Name] area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.</p>
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### **COMMON ATTRIBUTE 33**

<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
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### **COMMON ATTRIBUTE 34**

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"><li>• The specific data or information that is required to measure performance or outcomes.</li><li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li><li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li><li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li><li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li><li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li><li>• Violation severity levels.</li></ul>
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# Reliability*First* Corporation Reliability Standards Development Procedure

Reliability*First* Reliability Standards Development Procedure

Board Approval December 6<sup>th</sup>, 2007

Standards Committee Modified April 1<sup>st</sup>, 2008 - Board Concurrence May 22<sup>nd</sup>, 2008

# Reliability *First* Corporation Reliability Standards Development Procedure

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# Reliability*First* Corporation Reliability Standards Development Procedure

## Introduction

This procedure establishes the process for adoption of a Regional Reliability Standard<sup>1</sup> (hereinafter referred to as “Standard”) of the Reliability*First* Corporation (Reliability*First*) and the development of consensus for adoption, approval, revision, reaffirmation, and deletion of such Standards<sup>1</sup>. Reliability*First* Standards provide for the reliable regional and sub-regional planning and operation of the Bulk Power System<sup>2</sup> (BPS), consistent with Good Utility Practice<sup>2</sup> within the Reliability*First* geographical footprint.

This procedure was developed under the direction of the Reliability*First* Board of Directors (Board), who may request changes to this Reliability*First* Reliability Standards Development Procedure (hereinafter referred to as “this Procedure”) as deemed appropriate. A procedure for revising this Procedure is contained in Appendix A. This Procedure is consistent with the North American Electric Reliability Council (NERC) Reliability Standards Development Procedure.

Proposed Standards shall be subject to approval by NERC, as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the FPA. No Standard shall be effective within the Reliability*First* area unless filed by NERC with FERC and approved by FERC.

Reliability*First* Standards shall provide for as much uniformity as possible with NERC reliability standards across the interconnected BPS. A Reliability*First* Standard shall be more stringent than a NERC reliability standard, including a regional difference that addresses matters that the NERC reliability standard does not, or shall be a regional difference necessitated by a physical difference in the BPS. A Reliability*First* Standard that satisfies the statutory and regulatory criteria for approval of proposed NERC reliability standards, and that is more stringent than a NERC reliability standard, would generally be acceptable.

Reliability*First* Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable BPS owners, operators, and users within the Reliability*First* area, regardless of membership in the region.

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<sup>1</sup> Legacy standards, such as ECAR Documents, MAIN Guides, and MAAC Procedures shall be considered Reliability*First* Regional Reliability Standards for the purposes of this document until otherwise acted upon by the Reliability*First* Board

<sup>2</sup> As defined in the Reliability*First* By-laws Board Approval December 6<sup>th</sup>, 2007

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## Background

Regions may develop, through their own processes, separate “Regional Standards” (Reliability*First* Standards) that go beyond, add detail to, or implement NERC reliability standards, or otherwise address issues that are not addressed in NERC reliability standards.

As a condition of Reliability*First* membership, all Reliability*First* Members<sup>2</sup> agree to adhere to the NERC reliability standards. As such, the Reliability*First* and its Members will adhere to the NERC reliability standards in addition to the Reliability*First* Standards. NERC reliability standards and the Reliability*First* Standards are both to be included within the Reliability*First* Compliance Program.

Reliability*First* Standards are intended to apply only to that part of the Eastern Interconnection within the Reliability*First* geographical footprint. The development of these Reliability*First* Standards is developed according to the following principles via the process contained within this Procedure:

- Developed in a fair and open process that provided an opportunity for all interested parties to participate;
- Does not have an adverse impact on commerce that is not necessary for reliability;
- Provides a level of BPS reliability that is adequate to protect public health, safety, welfare, and national security and would not have a significant adverse impact on reliability; and
- Based on a justifiable difference between Regions or between sub-Regions within the Regional geographic area.

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<sup>2</sup> As defined in the Reliability*First* By-laws  
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## **Regional Reliability Standard Definition, Characteristics, and Elements**

### ***Definition of a Reliability Standard***

As contained in the ReliabilityFirst By-laws, ReliabilityFirst “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

Inherent in this definition, a ReliabilityFirst Standard will define certain obligations or requirements of entities that own, operate, plan, and use the BPS within the ReliabilityFirst geographical footprint. These obligations or requirements as contained in the ReliabilityFirst Standards are to be measurable consistent with Good Utility Practice. Standards are not to include processes or procedures that implement a Standard. In addition, obligations, requirements or procedures imposed upon ReliabilityFirst by NERC reliability standards are not to be ReliabilityFirst Standards, unless those obligations, requirements or procedures require the establishment of a “policy or standard” as defined by the ReliabilityFirst By-laws.

### ***Characteristics of a Regional Reliability Standard***

A Standard is policy or standard, including adequacy criteria to provide for the reliable regional and sub-regional planning and operation of the BPS, consistent with Good Utility Practice

A Standard shall generally have the following characteristics:

- **Measurable** - A Standard shall establish technical or performance requirements that can be practically measured.
- **Relative to NERC Reliability Standards** - A Standard generally must go beyond, add detail to, or implement NERC Reliability Standards, or cover matters not addressed in NERC Reliability Standards.

### ***Format Requirements of a Regional Reliability Standard***

A Standard shall consist of the format requirements shown in the Regional Reliability Standard Template. These requirements apply to the development and revision of Standards. These requirements are necessary to achieve Standards that are measurable,

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enforceable, and consistent. Supporting documents to aid in the implementation of a Standard may be referenced by the Standard but are not part of the Standard itself.

### Regional Reliability Standard Format Requirement Template

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference ReliabilityFirst documentation.
<b>Title</b>	A brief, descriptive phrase identifying the topic of the Standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the Standard, noting any specific additions or exceptions. If not applicable to the entire ReliabilityFirst area, then a clear identification of the portion of the BPS to which the Standard applies. Any limitation on the applicability of the Standard based on electric facility requirements should be described.
<b>Effective Date and Status</b>	The effective date of the Standard or, prior to approval of the Standard, the proposed effective date.
<b>Purpose</b>	The purpose of the Standard. The purpose shall explicitly state what outcome will be achieved or is expected by this Standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.



<b>Risk Factor(s)</b>	<p>The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below:</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to abnormal condition.</p> <p>A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the BPS, or the ability to effectively monitor and control the BPS, but is unlikely to lead to BPS instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to BPS instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor and control the BPS; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS.</p>
<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measurements. Measurements that will be used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measurement identifies to whom the measurement applies. Each measurement shall be tangible, practical, and as objective as is practical. Achieving the full compliance level of each measurement should be a necessary and sufficient indicator that the requirement was met.</p>

Compliance Administration Elements

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<b>Compliance Monitoring Process</b>	Defines for each measure: <ul style="list-style-type: none"><li>• The specific data or information that is required to measure performance or outcomes.</li><li>• The entity that is responsible to provide the data or information for measuring performance or outcomes.</li><li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li><li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li><li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li><li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li><li>• Violation severity levels.</li></ul>
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## Supporting Information Elements

<b>Interpretations</b>	Any Reliability <i>First</i> interpretations of the Standards that were developed, and approved in accordance with the “Interpretation of Standards” section of this Procedure, to expound on the application of the Standard for unusual or unique situations or provide clarifications.
<b>Implementation Plan</b>	Each Reliability <i>First</i> Standard shall have an associated implementation plan describing the effective date of the Standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the Standard in the compliance program and other considerations in the initial use of the Standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
<b>Supporting References</b>	This section references related documents that support reasons for, or otherwise provide additional information related to the Standard Examples include, but are not limited to: <ul style="list-style-type: none"> <li>• Glossary of Terms</li> <li>• Developmental history of the Standard and prior versions</li> <li>• Subcommittee(s) responsible for Standard</li> <li>• Notes pertaining to implementation or compliance</li> <li>• Standard references</li> <li>• Procedures/Practices</li> <li>• Training and/or Technical Reference</li> </ul>

## Roles in the Regional Reliability Standards Development Process

### *Process Roles*

**Originator** - Any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the Reliability*First* BPS, is allowed to request a Standard be developed or an existing Standard is modified, or deleted, by creating a Standards Authorization Request (SAR). See Appendix B.

**Board** – The Reliability*First* Board shall act on any proposed Standard that has gone through the process contained in this Procedure. Once the Reliability*First* Board approves a Standard, compliance with the Standard will be enforced consistent with the By-laws and the terms of the Standard.

**Standards Committee (SC)** - The Reliability*First* SC will consider which requests for new or revised Standards shall be assigned for development (or existing Standards considered for deletion). The SC manages the Standards development process. The SC

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will advise the ReliabilityFirst Board on Standards presented for adoption by the ReliabilityFirst Board.

**Standards Process Manager (SPM)** – A person or persons on the ReliabilityFirst staff assigned the task of ensuring that the development, revision or deletion of Standards is in accordance with this Procedure. The SPM works to ensure the integrity of the process and consistency of quality and completeness of the Standards. The SPM facilitates the administration of all actions contained in all steps in the process.

**Standards Process Staff** – Employees of the ReliabilityFirst that work with or for the SPM.

**Interim Compliance Committee (ICC)** – The ReliabilityFirst committee responsible for the administration of the ReliabilityFirst Compliance Program. The duties of this committee includes, but not limited to, providing inputs and comments during the standards development process to ensure the measures will be effective and other aspects of the Compliance Program can be practically implemented.

**Standard Drafting Team (SDT)** – Normally a team of technical experts, and typically includes a member of the ReliabilityFirst Standards staff and the Originator, assigned the task of developing a proposed Standard based upon an approved SAR using the Standard development process contained in this Procedure.

**Ballot Body (BB)** – The Ballot Body comprises all entities that qualify for one or more of the categories and are registered with ReliabilityFirst as potential ballot participants in the voting on standards. The categories of registration within the Ballot Body and the registration process are described in Appendix D.

**Ballot Pool** – The Ballot Pool is comprised of those members of the Ballot Body that register to vote for each particular standard that is up for vote. A separate Ballot Pool is established for each standard up for vote. Only individuals who have joined the Ballot Pool for that particular standard are eligible to vote on a standard.

**Regional Reliability Standard Development Process** (Flow chart of Process shown in Appendix C)

### *Assumptions and Prerequisites*

The ReliabilityFirst Regional Reliability Standards Development Process has the following characteristics:

- **Fair due process** - The ReliabilityFirst standards development process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the

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proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

- **Openness** - Participation is open to all Organizations who are directly and materially affected by the Reliability*First* region BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in the Reliability*First*, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to the Reliability*First* membership and to others.
- **Balanced** - The Reliability*First* standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.
- **Inclusive** - Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the BPS in the Reliability*First* area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.
- **Transparent** - All actions material to the development of Reliability*First* Standards shall be transparent. All standards development meetings shall be open and publicly noticed on Reliability*First*'s Web site.
- Does not unnecessarily delay development of the proposed Standard.

**Note:** The term “days” refers to calendar days.

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional BPS. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

While Reliability*First* Standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Reliability*First* Standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

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ReliabilityFirst will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the ReliabilityFirst and NERC websites.

***Step 1 - Development of a Standards Authorization Request (SAR) to Develop, Revise or Delete a Regional Reliability Standard***

Any individual representing an organization (Originator) which is directly or materially impacted by the operation of the BPS within the geographical footprint of the ReliabilityFirst may request, via a submittal of a Standard Authorization Request (SAR) form, the development, modification, or deletion of a ReliabilityFirst Standard. Any such request shall be submitted to the ReliabilityFirst SPM, or his/her designee, or by another process as otherwise posted on the ReliabilityFirst website. The SAR form may be downloaded from the ReliabilityFirst website.

The SAR contains a description of the proposed Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Standard. The SPM will verify that the submitted SAR form has been adequately completed. The SPM may offer the Originator suggestions regarding changes and/or improvements to improve clarity and assist the ReliabilityFirst community to understand the Originator's intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the SPM will electronically acknowledge receipt of the SAR.

The SPM will forward all adequately completed SARs to the ReliabilityFirst SC. Within 60 days of receipt of an adequately completed SAR, the SC shall determine the disposition of the SAR. The disposition decision and decision process shall use the normal "business rules and procedures" of the SC then in effect. The SC may take one of the following actions:

- Accept the SAR as a candidate for: development of a new Standard, revision of an existing Standard or deletion of an existing Standard. The SC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The SC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the SC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision.
- Remand the SAR back to the Originator for additional work. The SPM will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the SC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the SC

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Any SAR that is accepted by the SC for development of a Standard (or modification or deletion of an existing Standard) shall be posted for public viewing on the ReliabilityFirst website within no greater than 30 days of acceptance by the SC. The status of posted SARs will be publicly noted at regularly scheduled (appropriately two weeks) intervals.

Any documentation of the deliberations of the SC concerning SARs shall be made available according to the “ReliabilityFirst Standards Committee Governance” document then in effect.

The SC shall submit a written report to the ReliabilityFirst Board on a periodic basis (at least at every regularly scheduled ReliabilityFirst Board meeting) showing the status of all SARs that have been brought to the SC for consideration.

### ***Step 2 – Formation of the Standard Drafting Team and Declaration of Milestone Date***

Upon acceptance by the SC of a SAR for development of a new Standard (or modification or deletion of an existing Standard), the SC shall direct the SPM to develop a qualified balance slate for the SDT using the specific directions and preferences of the SC. The SPM will send out self-nomination forms to solicit SDT nominees. The SDT will consist of a group of people (members of ReliabilityFirst and, as appropriate, non-members) who collectively have the necessary technical expertise and work process skills. The SPM will recommend a slate of ad-hoc individuals or a preexisting task force, work group or similar for the SDT based upon the SC’s desired SDT capabilities.

The SC may also direct the SPM to designate an existing ReliabilityFirst committee (or subset thereof) as the SDT augmented by other persons as may be appropriate for the subject matter. The SC will insure that SDT membership includes all necessary administrative support. This support typically includes a ReliabilityFirst staff member and the Originator if he/she chooses to participate. The SC appoints the interim chair (should not be a staff person) of the SDT. The SDT will elect the permanent Chair and Vice-chair at its first meeting.

The SPM submits the proposed list of names of the SDT to the SC. The SC will either accept the recommendations of the SPM or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

Upon approval of the SDT slate, the SC will declare a preliminary date on which the SDT is expected to have ready a completed draft Standard and associated supporting documentation available for consideration by the ReliabilityFirst membership.

### ***Step 3 – Work and Work Product of the Standard Drafting Team***

The SDT will then develop a work plan for completing the Standard development work, including the establishment of milestones for completing critical elements of the work in sufficient detail to ensure that the SDT will meet the date objective established by the SC

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or the SDT shall propose an alternative date. This plan is then delivered to the SC for its concurrence.

The SDT is to meet, either in person or via electronic means as necessary, establish sub-work teams (made up of members of the SDT) as necessary, and performs other activities to address the parameters of the SAR and the milestone date(s) established by the SC.

The work product of the SDT will consist of the following:

- A draft Standard consistent with the SAR on which it was based.
- An assessment of the impact of the SAR on neighboring regions, and appropriate input from the neighboring regions if the SAR is determined to impact any neighboring region.
- An implementation plan, including the nature, extent and duration of field-testing, if any.
- Identification of any existing Standard that will be deleted, in part or whole, or otherwise impacted by the implementation of the draft Standard.
- Technical reports, white papers and/or work papers that provide technical support for the draft Standard under consideration.
- Document the perceived reliability impact should the Standard be approved.

Upon completion of these tasks, the SDT submits these documents to the SC, which will verify that the proposed Standard is consistent with the SAR on which it was developed

The SDT regularly (at least once each month) informs the SC of its progress in meeting a timely completion of the draft Standard. The SDT may request of the SC scope changes of the SAR at any point in the Standard development process.

The SC may, at any time, exercise its authority over the Standards development process by directing the SDT to move to Step 4 and post for comment the current work product. If there are competing drafts, the SC may, at its sole discretion, have posted the version(s) of the draft Standard for comment on the *ReliabilityFirst* website. The SC may take this step at any time after a SDT has been commissioned to develop the Standard.

#### **Step 4 – *Comment Posting Period***

At the direction from the SC, the SPM then facilitates the posting of the draft Standard on the *ReliabilityFirst* website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The SPM shall also inform *ReliabilityFirst* Members and other potentially interested entities inside or outside of *ReliabilityFirst* of the posting using typical membership communication procedures then currently in effect or by other means as deemed appropriate. As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The Ballot Pool category description and associated requirements are in Appendix D.

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Within 30 days of the conclusion of 30-day comment posting period the SDT shall convene and consider changes to the draft Standard, the implementation plan and/or supporting technical documents based upon comments received. Based upon these comments, the SDT may elect to return to step 3 to revise the draft Standard, implementation plan and/or supporting technical documentation.

The SDT shall prepare a “modification report” summarizing the comments received and the changes made as a result of these comments. The modification report also summarizes comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. Responses to all comments will be posted on the ReliabilityFirst website no later than the next posting of the proposed Standard.

### **Step 5 – Posting for Voting by ReliabilityFirst Registered Ballot Body**

Upon recommendation of the SDT, and if the SC concurs that all of the requirements for development of the Standard have been met, the SPM will post the revised draft Standard, implementation plan, supporting technical documentation and the “modification report”. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

Entities may register in the BB at any time during the Standards process. The BB category description and associated rules are in Appendix D.

By 11:59 PM Central Prevailing Time (CPT) of the seventh day of the 15 day pre ballot posting period, registered BB entities intending to vote on the proposed standard must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The SPM will schedule a Vote by the Ballot Pool which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting. The Vote by the Ballot Pool is an advisory to the ReliabilityFirst Board.

The Ballot Pool shall be allowed to vote over a period of 15 days. It is expected that votes will be submitted electronically, but may be submitted through other means as approved by the SC.

All entities registered as part of the BB are eligible to participate in voting on proposed new Standards, Standard revisions or Standard deletions. There is a requirement to separately join a Ballot Pool to participate in voting for each standard. Each entity can join only in one category of the Ballot Pool and shall have one vote.

The voting results will be composed of only the votes from BB entities that have joined the Ballot Pool for the standard being voted on and responding within the 15 day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the ReliabilityFirst website prior to going to the SC or Board.

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### **Step 6A – Voting Receives Simple Majority of Affirmative Category Votes**

A simple majority<sup>3</sup> of votes within a category determines the vote for that category. If there is a simple affirmative majority of category votes (only those categories with votes cast will be considered) during the 15-day voting period and a quorum is met (a quorum consists of a simple majority of individuals who have joined the Ballot Pool), the SC will forward the Standard to the Reliability*First* Board for action (Step 7).

### **Step 6B – Voting Does Not Receive Simple Majority of Affirmative Category Votes or a Quorum is Not Met**

If a draft Standard does not receive a simple affirmative majority of votes determined for each category (only those categories with votes cast will be considered) during the 15-day voting period or a quorum is not met during the 15-day voting period, the SC may:

- Direct the existing SDT to reconsider or modify certain aspects of the draft Standard and/or implementation plan. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The SC may require a second comment period prior to the second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.
  - If there is a simple affirmative majority of categories with votes cast and a quorum is met during the second voting period, the SC will forward it to the Reliability*First* Board for action (Step 7).
  - If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the Reliability*First* Board. The SC may also submit an assessment, opinion and recommendations to the Reliability*First* Board (Step 7).
- Revise the SAR on which the draft Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The SC may require a second comment period prior to a second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.
  - If there is a simple affirmative majority of categories with votes cast during the second voting period and a quorum is met, the SC will forward it to the Reliability*First* Board for action (Step 7).

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<sup>3</sup> For the purposes of determining majority within a category, an abstention is not considered a vote. Board Approval December 6<sup>th</sup>, 2007  
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- If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the ReliabilityFirst Board. The SC may also submit an assessment, opinion and recommendations to the ReliabilityFirst Board (Step 7).
- Recommend termination of all work on the development of the Standard action under consideration and so notify the ReliabilityFirst Board.

***Step 7 – Action by the ReliabilityFirst Board***

A draft Standard submitted to the ReliabilityFirst Board for action must be publicly posted at least 30 days prior to action by the Board. At a regular or special meeting, the ReliabilityFirst Board shall consider adoption of the draft Standard. The Board will consider the results of the voting and dissenting opinions. The Board will consider any advice offered by the SC.

Draft Standards that received a simple affirmative majority of categories with votes cast shall be delivered to the ReliabilityFirst Board for their action. The ReliabilityFirst Board shall be provided with an “informational package” which includes:

- The draft Standard and any modification or deletion of other related existing Standard(s)
- Implementation Plan (including recommending field testing and effective dates)
- Technical Documentation supporting the draft Standard
- A summary of the vote and summary of the comments and responses that accompanied the votes.

The ReliabilityFirst Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.
- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

Draft Standards that did not receive a simple affirmative majority of categories with votes cast in the second voting period shall be delivered to the ReliabilityFirst Board for their action. The ReliabilityFirst Board shall be provided with an “informational package”.

The ReliabilityFirst Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.

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- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

Once a regional Reliability*First* Standard is approved by the Board, the standard will be submitted to NERC for approval and filing with FERC.

***Step 8 - Implementation of a Regional Reliability Standard***

Upon approval of a draft Standard action by FERC, the SPM will notify the membership of the effective date through the normal and customary membership communication procedures and processes then in effect. The SPM will also notify the Reliability*First* Compliance Staff for integration into the Reliability*First* Compliance Program.

## **Appendix A**

### **Maintenance of Regional Reliability Standards Development Process**

Significant changes to this Procedure shall begin with the preparation of a SAR and be handled using the same procedure as a request to add, modify, or delete a Standard.

The Reliability*First* SC has the authority to make ‘minor’ changes to this Procedure as deemed appropriate by the SC and subject to the SC voting practices and procedures according to the “Reliability*First* Standards Committee Governance” document then in effect. The SC shall promptly notify the Reliability*First* Board of such ‘minor’ changes to this Procedure for their review and concurrence at the next Reliability*First* Board meeting.

### **Maintenance of Regional Reliability Standards**

The SC shall ensure that each Standard shall be reviewed at least once every five years from the effective date of the Standard or the latest revision to the Standard, whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the SC shall recommend to the Reliability*First* Board that the Standard be reaffirmed. If the review indicates a need to revise or delete a Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this Procedure.

### **Urgent Action**

Under certain conditions, the SC may designate a proposed Standard or revision to a Standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed Standard or revision could materially impact reliability of the BPS. The SC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a Standard.

A requester prepares a SAR and a draft of the proposed Standard and submits both to the SPM. The SAR must include a justification for urgent action. The SPM submits the request to the SC for its consideration. If the SC designates the requested Standard or revision as an urgent action item, then the SPM shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 5. Processing will continue as outlined in the subsequent steps. In the event additional drafting is required, a SDT will be assembled as outlined in the Procedure.

Any Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the Standard permanent, then the Standard would be required to go through the full Standard

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development process. All urgent action Standards require ReliabilityFirst Board, NERC and FERC approval, as outlined for Standards in the regular process.

Urgent actions that expire may be renewed using the urgent action process again, in the event a permanent Standard is not adopted. In determining whether to authorize an urgent action Standard for a renewal ballot, the SC shall consider the impact of the Standard on the reliability of the BPS and whether expeditious progress is being made toward a permanent replacement Standard. The SC shall not authorize a renewal ballot if there is insufficient progress toward adopting a permanent replacement Standard or if the SC lacks confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action Standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement Standard. With these principles, there is no predetermined limit on the number of times an urgent action may be renewed. However, each urgent action Standard renewal shall be effective only upon approval by the ReliabilityFirst Board, NERC and FERC.

Any person or entity, including the SDT working on a permanent replacement Standard, may at any time submit a SAR proposing that an urgent action Standard become a permanent Standard by following the full Standards process.

### **Interpretations of Standards**

All persons who are directly and materially affected by the reliability of ReliabilityFirst BPS shall be permitted to request an interpretation of the standard. The person requesting an interpretation will send a request to the SPM explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard.

The SPM, along with guidance from the SC, will assemble a team with the relevant expertise to address the request. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The SPM submits the proposed list of names of the IDT to the SC. The SC will either accept the recommendations of the SPM or modify the IDT slate.

As soon as practical (not more than 45 days), the team will draft a written interpretation to the standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Standard addressing only the issues raised, the team will forward the draft interpretation to the SPM. The SPM will forward the draft interpretation to the Interim Compliance Committee (ICC). The ICC is to assess if the inclusion of the interpretation lessens the measurability of the Standard. In addition, the SPM will forward the interpretation to the Reliability Committee (RC). Barring receipt of an opinion from either the ICC or RC within 21 calendar days, that the interpretation sufficiently lessens measurability or is not technically appropriate for the Standard, respectively, the SPM will forward the interpretation to the SC. The SC will determine if

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the interpretation is consistent with the Standard. The SC will forward the interpretation to the Reliability *First* Board for informational purposes as being appended to the approved Standard.

Note: In the event that the ICC determines that measurability is lessened, the ICC shall provide an explanation of its reasoning to the SPM and IDT for inclusion in a subsequent revision. The RC shall in a similar manner provide an explanation of its reasoning if it determines that the interpretation makes the standard technically inappropriate. In either case, the IDT and SPM will continue to re-circulate the interpretation as stated above.

The interpretation will stand until such time as the standard is revised through the normal process, at which time the standard will be modified to incorporate the clarifications provided by the interpretation.

## **Appeals**

Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a Standard shall have the right to appeal. This appeals process applies only to the Standards process as defined in this Procedure.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

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

### ***Level 1 Appeal***

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the SPM that describes the substantive or procedural action or inaction associated with a Standard or the standards process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the SPM shall prepare a written response addressed to the appellant as soon as practical but not more than 45-days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the standard.

### ***Level 2 Appeal***

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If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the SPM, the SPM shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by the Reliability*First* Board.

In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The SPM shall post the complaint and other relevant materials and provide at least 30-days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the SC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a reliability standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to the Reliability*First* Board for consideration at the time the Board decides whether to adopt a particular reliability standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30-days after the announcement of the vote on the Standard in question.



## Appendix B

### Standard Authorization Request

The SC shall be responsible for implementing and maintaining this form as needed to support the information requirements of the standards development process in this Procedure. Changes to this form are considered minor, and therefore subject to only the approval of the SC.

#### ReliabilityFirst Standard Authorization Request Form

**ReliabilityFirst  
will complete**

Title of Proposed Standard
Request Date

ID
Authorized for Posting
Authorized for Development

#### *SAR Originator Information*

Name	<b>SAR Type</b> (Check box for one of these selections.)	
Company	<input type="checkbox"/>	New Standard
Telephone	<input type="checkbox"/>	Revision to Existing Standard
Fax	<input type="checkbox"/>	Withdrawal of Existing Standard
E-mail	<input type="checkbox"/>	Urgent Action

**Purpose** (Provide one or two sentences.)

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**Industry Need** (Provide one or two sentences.)

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**Brief Description** (A few sentences or a paragraph.)

***Reliability Functions***

***The Standard will Apply to the Following Functions*** (Check box for each one that applies.)

	Reliability Authority	Ensures the reliability of the bulk transmission system within its Reliability Authority area. This is the highest reliability authority.
	Balancing Authority	Integrates resource plans ahead of time, and maintains load-interchange-resource balance within its metered boundary and supports system frequency in real time
	Generator Owner	Owns and maintains generating units
	Interchange Authority	Authorizes valid and balanced Interchange Schedules
	Planning Authority	Plans the BPS
	Resource Planner	Develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area
	Transmission Planner	Develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area
	Transmission Service Provider	Provides transmission services to qualified market participants under applicable transmission service agreements
	Transmission Owner	Owns transmission facilities
	Transmission Operator	Operates and maintains the transmission facilities, and executes switching orders
	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer

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	Generator Operator	Operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services
	Purchasing-Selling Entity	The function of purchasing or selling energy, capacity and all necessary Interconnected Operations Services as required
	Load-Serving Entity	Secures energy and transmission (and related generation services) to serve the end user
	Market Operator	Integrates energy, capacity, balancing, and transmission resources to achieve an economic, reliability-constrained dispatch of resources. The dispatch may be either cost-based or bid-based
	Regional Reliability Organizations	An entity that ensures that a defined area of the BPS is reliable, adequate and secure. A member of the North American Electric Reliability Council. The Regional Reliability Organization can serve as the Compliance Monitor

NOTE: The SDT may find it necessary to modify the initial reliability function responsibility assignment as a result of the standards development and comments received.

*Reliability Principles*

<b><i>Applicable Reliability Principles (Check box for all that apply.)</i></b>	
	1. Interconnected BPS shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
	2. The frequency and voltage of interconnected BPS shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
	3. Information necessary for the planning and operation of interconnected BPS shall be made available to those entities responsible for planning and operating the systems reliably.
	4. Plans for emergency operation and system restoration of interconnected BPS shall be developed, coordinated, maintained, and implemented.
	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected BPS.
	6. Personnel responsible for planning and operating interconnected BPS shall be trained, qualified, and have the responsibility and authority to implement actions.
	7. The security of the interconnected BPS shall be assessed, monitored, and maintained on a wide-area basis.

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*Market Interface Principles*

<b><i>Does the proposed Standard comply with all of the following Market Interface Principles?</i></b>	
Recognizing that reliability is an essential requirement of a robust North American economy:	
yes or no	1. A reliability standard shall not give any market participant an unfair competitive advantage.
yes or no	2. A reliability standard shall neither mandate nor prohibit any specific market structure.
yes or no	3. A reliability standard shall not preclude market solutions to achieving compliance with that standard.
yes or no	4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.

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***Detailed Description*** (Provide enough detail so that an independent entity familiar with the industry could draft a Standard based on this description.)

**Related Standards (NERC and Regional)**

Standard No.	Explanation

***Related SARs***

SAR ID	Explanation

### **Implementation Plan**

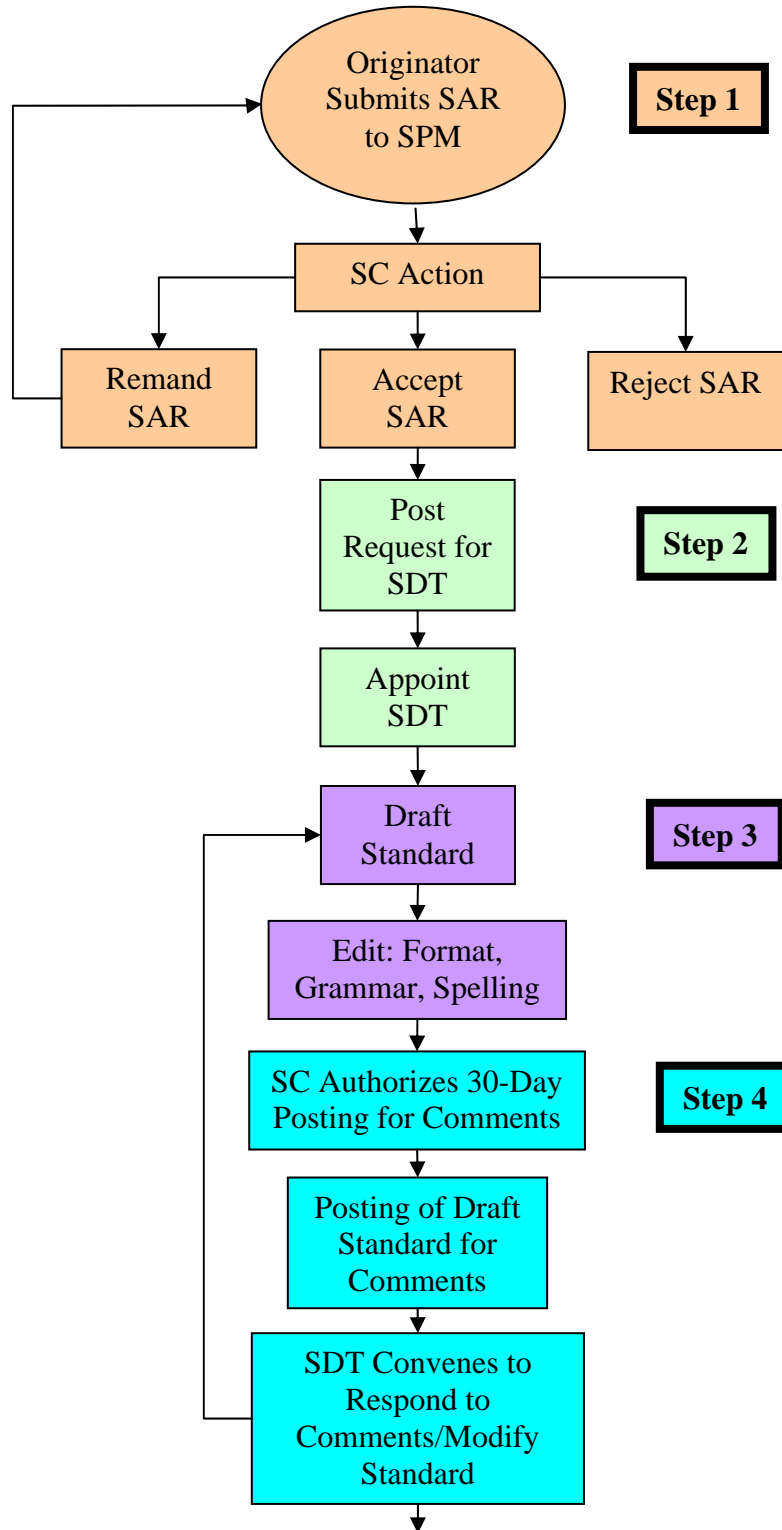
<b>Description</b> <i>(Provide plans for the implementation of the proposed standard, including any known systems or training requirements. Include the reliability risk(s) associated with the violation that the standard will mitigate, and the costs associated with implementation.)</i>
<b>Proposed Implementation</b> <b>days after Board adoption or</b>
<b>on (date):</b>

#### **Assignments**

	<i>Assignment</i>
<b>Team Members</b>	
<b>ReliabilityFirst Staff</b>	

## Appendix C

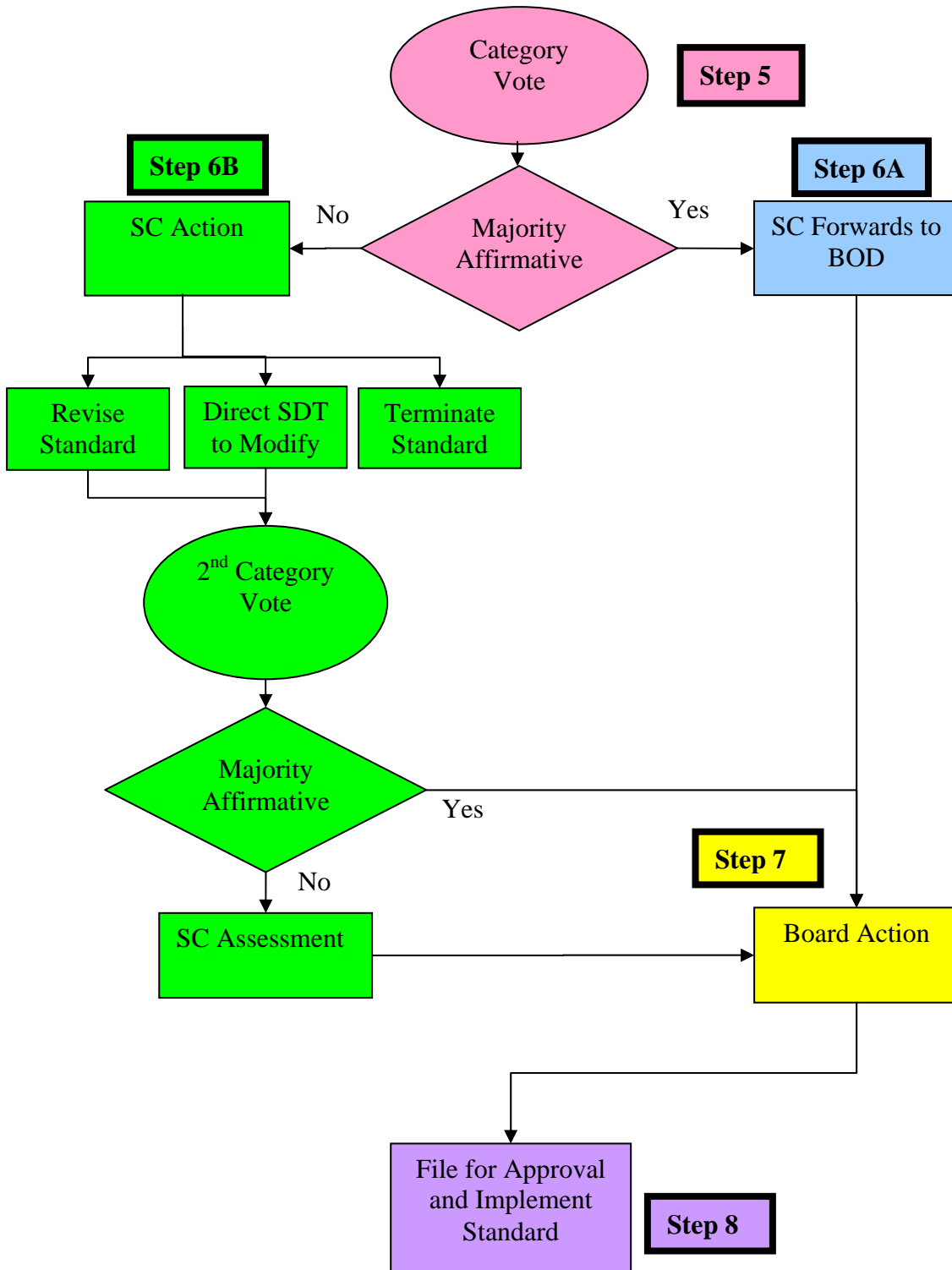
### Flowchart for Standards Process



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## **Appendix D**

### **Ballot Pool Categories**

For the purposes of category Ballot Pool registration and voting, an entity shall register in only one of the following categories for each standard that will be voted on (only one vote is allowed per entity per vote):

Category 1 – Transmission Owner, Transmission Operator, Transmission Service Provider

Category 2 – Generator Owner, Generator Operator

Category 3 – Load Serving Entity, Purchasing and Selling Entity, End User

Category 4 – Reliability Coordinator, Planning Coordinator, Transmission Planner, Resource Planner, Regional Transmission Organization, Balancing Authority, regulatory or governmental agency

Category 5 – Distribution Provider

### **Ballot Body Registration**

Entities may register in the BB at any time during the Standards process. The SPM shall review all applications for joining the BB, and make a determination of whether they qualify for the self-selection category(ies). In order to comment or vote you must have an active membership in the BB. When you submit your registration request to join the BB, you are placed in a “pending stage” until your account is activated. Activation of your account may take up to 24 hours. You will be unable to submit comments or join a Ballot Pool until your account is activated. The contact designated as primary representative to ReliabilityFirst is the voting member with the secondary contact as the backup.

Note: Registration for a BB is not the same as registration for the compliance registry. Although the terminology used to describe the BB categories in most cases has the same meaning as the terms used in the NERC Functional Model, registration in a BB goes beyond the compliance registry in that entities smaller than those stated in the compliance registry guidelines are allowed to register in a BB. Entities shall have evidence that they qualify for the BB category they register in. Such evidence shall be available for the SPM review to verify BB registration and may include compliance registration.

### **Ballot Pool Formation**

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In order to participate in voting on a particular standard, an entity must join the Ballot Pool being established for the standard as follows:

1 – As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

2 - By close of business of the seventh day of the 15 day pre ballot posting period, entities wishing to vote must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

## **EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

### **1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

#### **1.1 Obligations of ReliabilityFirst Corporation**

ReliabilityFirst Corporation (ReliabilityFirst) will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within ReliabilityFirst's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

#### **1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program**

ReliabilityFirst has adopted the pro forma compliance program without exception, as revised by NERC. ReliabilityFirst has adopted the Attachment 2 Uniform Eastern Interconnection Hearing Process with the following exceptions:

- a. The ReliabilityFirst Hearing Procedure allows members of the Hearing Body to introduce information to the proceeding upon Motion. The members of the ReliabilityFirst Compliance Committee, from which the Hearing Body is drawn, may have unique expertise, knowledge and experience and may be able to contribute useful background information and documentation to the hearing procedure decision process. The ReliabilityFirst Hearing Procedure provides that any hearing participant may object to the introduction of evidence by the Hearing Body and seek to submit its own evidence in response to the information or documents offered by the Hearing Body. A decision to deny the responsive evidence or admit evidence over objection is to be explained in the hearing record.
- b. Whereas NERC adopts the generally recognized rules of evidence, the ReliabilityFirst Hearing Procedure does not incorporate the generally recognized rules of evidence but rather allows our Hearing Officer to exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and the evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. ReliabilityFirst believes that allowing a degree of freedom in the introduction of evidence in the Hearing Procedure allows for the most expeditious, thorough and just proceeding. Furthermore, such an evidentiary policy provides all participants the opportunity to submit all relevant facts and evidence for consideration by the Hearing Officer and Hearing Body in order to promote a fair and impartial proceeding that includes all of the relevant facts and completes an inclusive record to serve as a basis for a correct and

legally sustainable ruling, decision or order that promotes and advances real-world reliability.

## **2.0 REGIONAL HEARING OF COMPLIANCE MATTERS**

Reliability*First* shall establish a hearing body with authority to conduct and render decisions in a formal compliance hearing of a Registered Entity who is the subject of a notice of alleged violation, proposed penalty or sanction, contested mitigation plan or contested remedial action directive. Reliability*First's* hearing body generally will be the Board Compliance Committee (CC), which is a portion of the full Board of Directors. The CC is comprised of five (5) Directors, three (3) of which are independent Board of Director members, and two (2) that are stakeholder Board of Director members. For the Hearing Body to take action at a hearing, a quorum must be present. A quorum is a majority of the members of the Hearing Body, provided that at least two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present.

## **3.0 OTHER DECISION-MAKING BODIES**

There are no other decision-making bodies within the Reliability*First* organizational structure with regards to the compliance program. The Compliance Committee of the Board of Directors has been given the responsibility and authority to make all compliance program related decisions.



COMPLIANCE MONITORING  
AND  
ENFORCEMENT PROGRAM

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## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the ReliabilityFirst Corporation (“ReliabilityFirst”) to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1** Alleged Violation: A potential violation for which ReliabilityFirst has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by ReliabilityFirst that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7** Compliance Enforcement Authority: NERC or ReliabilityFirst in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.9** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by ReliabilityFirst or NERC and

## Compliance Monitoring and Enforcement Program

will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

- 1.1.10** Exception Reporting: Information provided to ReliabilityFirst by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including a ReliabilityFirst decision, Settlement Agreement, or otherwise.
- 1.1.12** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to ReliabilityFirst in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to ReliabilityFirst on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15** ReliabilityFirst Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within ReliabilityFirst's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16** ReliabilityFirst Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be

## Compliance Monitoring and Enforcement Program

actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by ReliabilityFirst, (3) the methods to be used by ReliabilityFirst for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) ReliabilityFirst's Annual Audit Plan.

- 1.1.17** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and ReliabilityFirst Compliance Registry.
- 1.1.18** Remedial Action Directive: An action (other than a penalty or sanction) required by ReliabilityFirst that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.19** Required Date: The date given a Registered Entity in a notice from ReliabilityFirst by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.20** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by ReliabilityFirst and that are included for monitoring in the ReliabilityFirst Implementation Plan.
- 1.1.21** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.
- 1.1.22** Spot Checking: A process in which ReliabilityFirst requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

## Compliance Monitoring and Enforcement Program

### 2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

ReliabilityFirst shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. ReliabilityFirst shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within ReliabilityFirst's area of responsibility. Each Registered Entity shall inform ReliabilityFirst promptly of changes to its registration information. ReliabilityFirst shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. ReliabilityFirst shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

ReliabilityFirst will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. ReliabilityFirst will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

ReliabilityFirst shall develop, maintain, and provide to NERC a ReliabilityFirst Compliance Registry with updates as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations or restrictions placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard.

## Compliance Monitoring and Enforcement Program

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

ReliabilityFirst will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by ReliabilityFirst through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, ReliabilityFirst may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

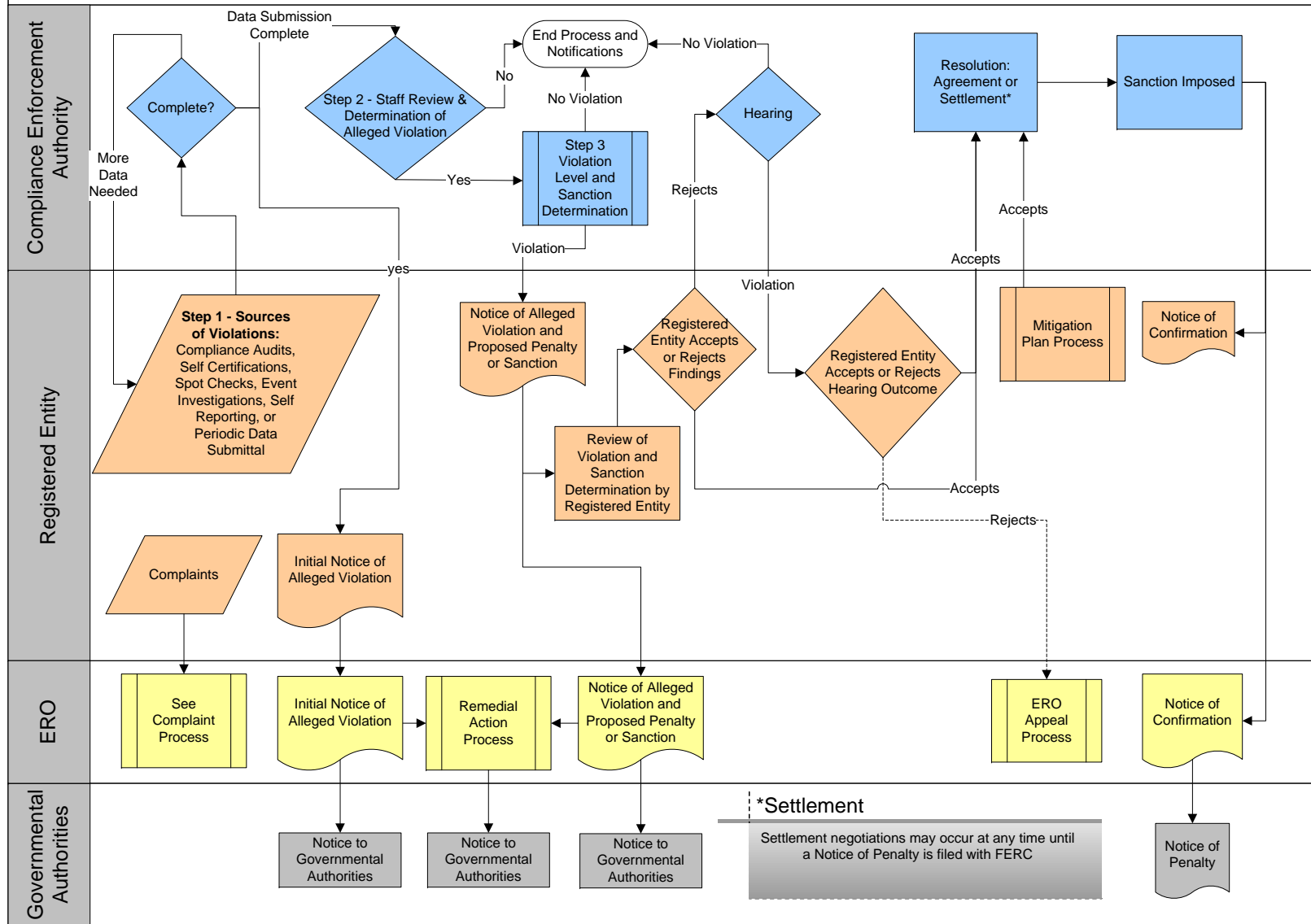
Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and ReliabilityFirst. NERC or ReliabilityFirst may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.

# Compliance Monitoring and Enforcement Program

## NERC Compliance Monitoring and Enforcement Program Overview



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:<sup>1</sup>

- ReliabilityFirst distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. ReliabilityFirst provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, ReliabilityFirst informs the Registered Entity of the Reliability Standards to be evaluated. NERC or ReliabilityFirst provides the audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, ReliabilityFirst notifies the Registered Entity of the Compliance Audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, ReliabilityFirst will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to ReliabilityFirst the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the Compliance Audit. The audit team follows NERC audit guidelines in the implementation of the Compliance Audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an

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<sup>1</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

## Compliance Monitoring and Enforcement Program

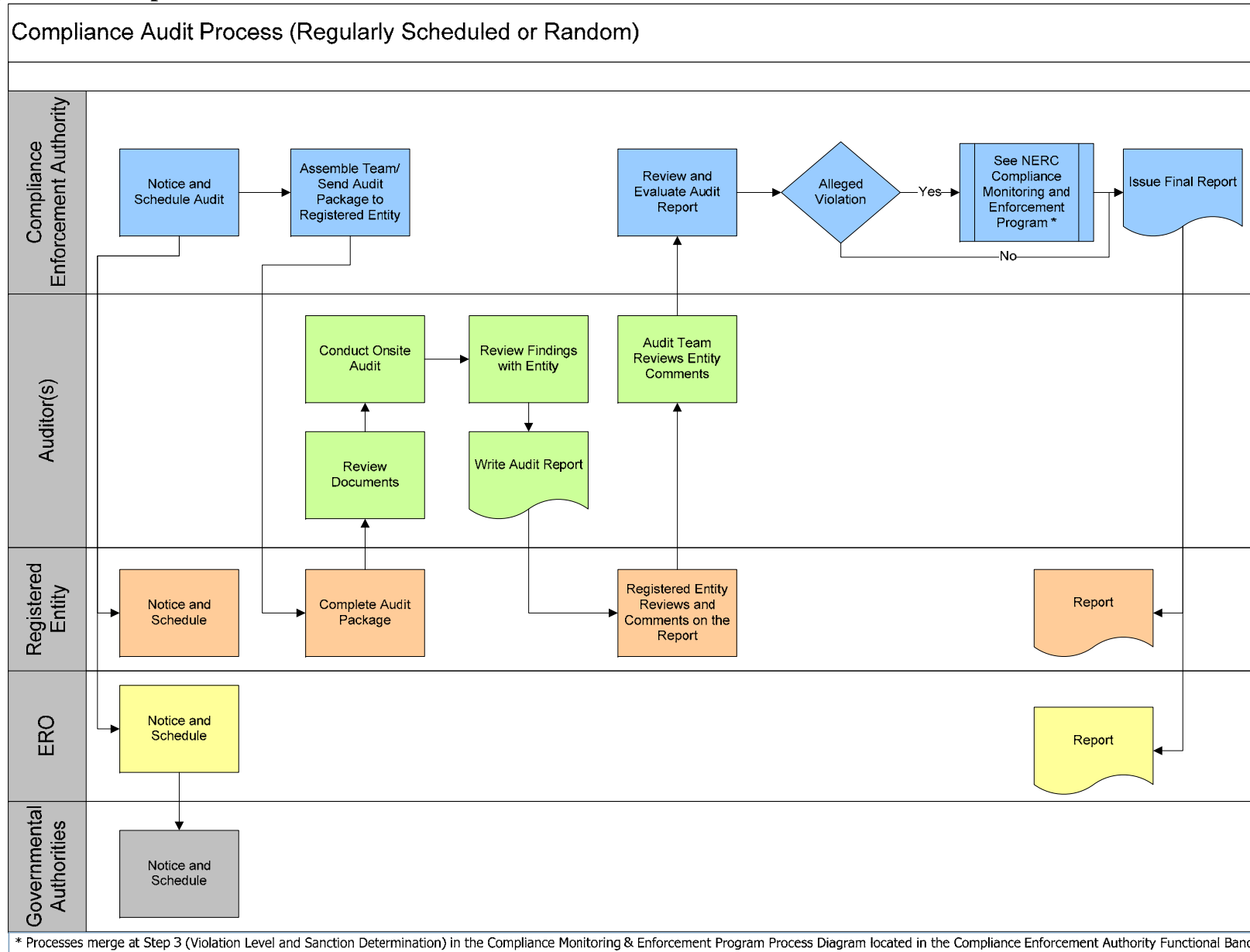
audit report, including an assessment of compliance with the Reliability Standards, to ReliabilityFirst.

- ReliabilityFirst reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- ReliabilityFirst provides the final audit report to the Registered Entity and to NERC.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- ReliabilityFirst will notify NERC of any Alleged Violations as required by Section 8.0.



# Compliance Monitoring and Enforcement Program

**Figure 3.1 – Compliance Audit Process**



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule**

ReliabilityFirst shall develop an Annual Audit Plan. The Annual Audit Plan of ReliabilityFirst will be included in the ReliabilityFirst Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or ReliabilityFirst provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, ReliabilityFirst shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. ReliabilityFirst will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

Revisions and additions to ReliabilityFirst's Annual Audit Plan shall be approved by NERC and the Registered Entity shall be notified in a timely manner (normally 60 days in advance) of changes or revisions to scheduled audit dates.

### **3.1.3 Frequency of Compliance Audits**

ReliabilityFirst will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by ReliabilityFirst if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by ReliabilityFirst or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated; ReliabilityFirst shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### **3.1.4 Scope of Compliance Audits**

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### **3.1.5 Conduct of Compliance Audits**

The audit team shall be comprised of staff personnel from ReliabilityFirst and may include contractors and industry volunteers as determined by ReliabilityFirst to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from ReliabilityFirst and is responsible for the conduct of the Compliance Audit and preparation of

## Compliance Monitoring and Enforcement Program

the audit report. At their discretion, NERC Compliance Staff may participate on any ReliabilityFirst Compliance Audit team either as an observer or as an audit team member as determined by ReliabilityFirst. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by ReliabilityFirst is applicable.
- Successfully complete all NERC or NERC-approved ReliabilityFirst auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to ReliabilityFirst no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to ReliabilityFirst within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to ReliabilityFirst at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit. ReliabilityFirst will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

### 3.1.6 Compliance Audit Reports

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

## **Compliance Monitoring and Enforcement Program**

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to ReliabilityFirst who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. ReliabilityFirst will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by ReliabilityFirst in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or ReliabilityFirst until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with ReliabilityFirst pursuant to the provisions of Section 5.0.

Information deemed by ReliabilityFirst or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### **3.2 Self-Certification**

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

## Compliance Monitoring and Enforcement Program

### 3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**.<sup>2</sup>

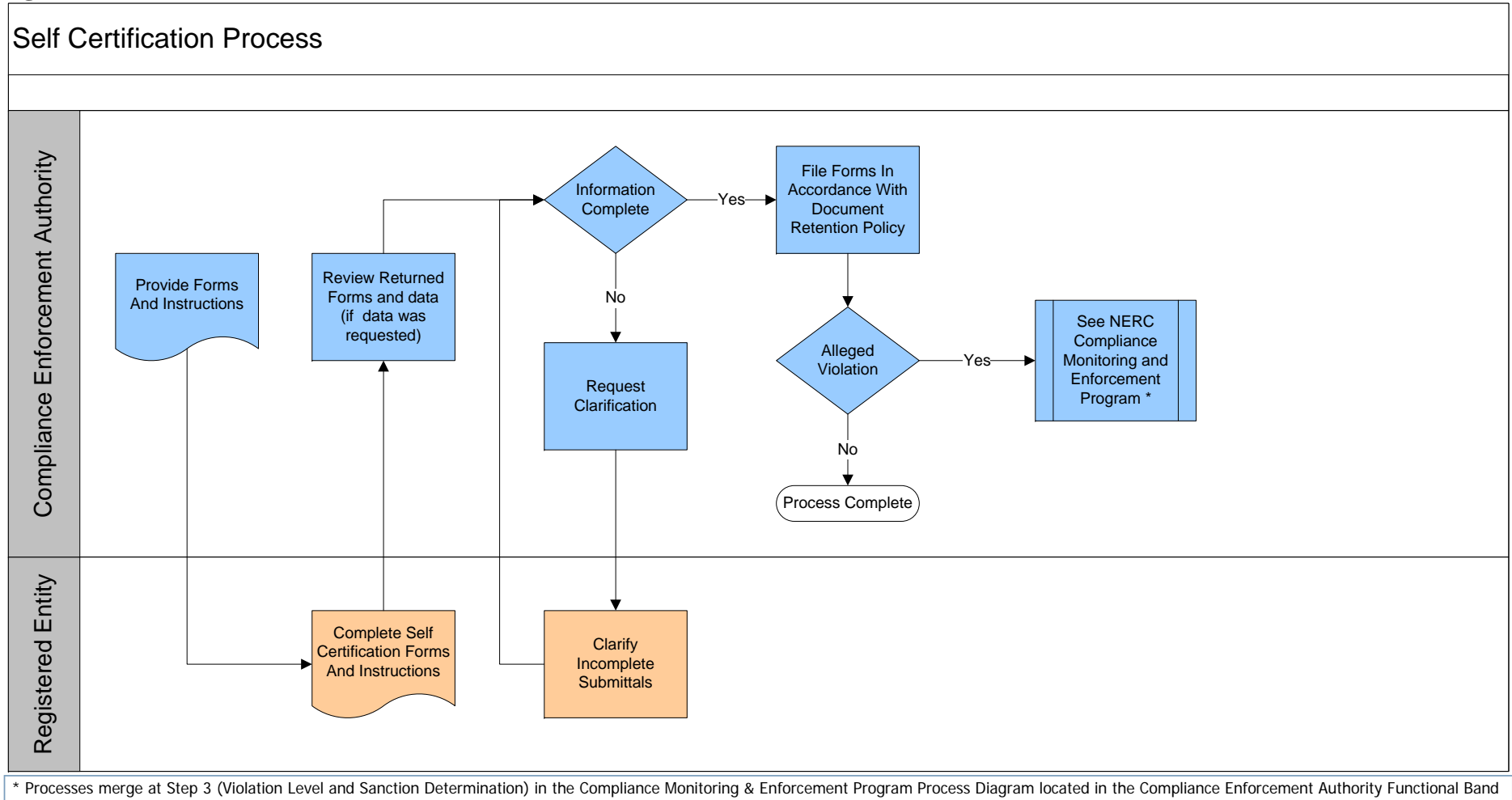
- ReliabilityFirst posts and updates the reporting schedule and informs Registered Entities. ReliabilityFirst ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- ReliabilityFirst requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to ReliabilityFirst.
- ReliabilityFirst reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- ReliabilityFirst completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- ReliabilityFirst will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>2</sup>If no non-compliances are found, this process normally completes within sixty (60) days of ReliabilityFirst's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by ReliabilityFirst. Spot Checking may be initiated by ReliabilityFirst at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. ReliabilityFirst then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by ReliabilityFirst as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>3</sup>

- ReliabilityFirst notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by ReliabilityFirst will allow at least twenty (20) days for the information to be submitted or available for review.
- ReliabilityFirst, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by ReliabilityFirst is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking Team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to ReliabilityFirst in the format specified in the request.
- ReliabilityFirst reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- ReliabilityFirst reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of ReliabilityFirst's receipt of data.

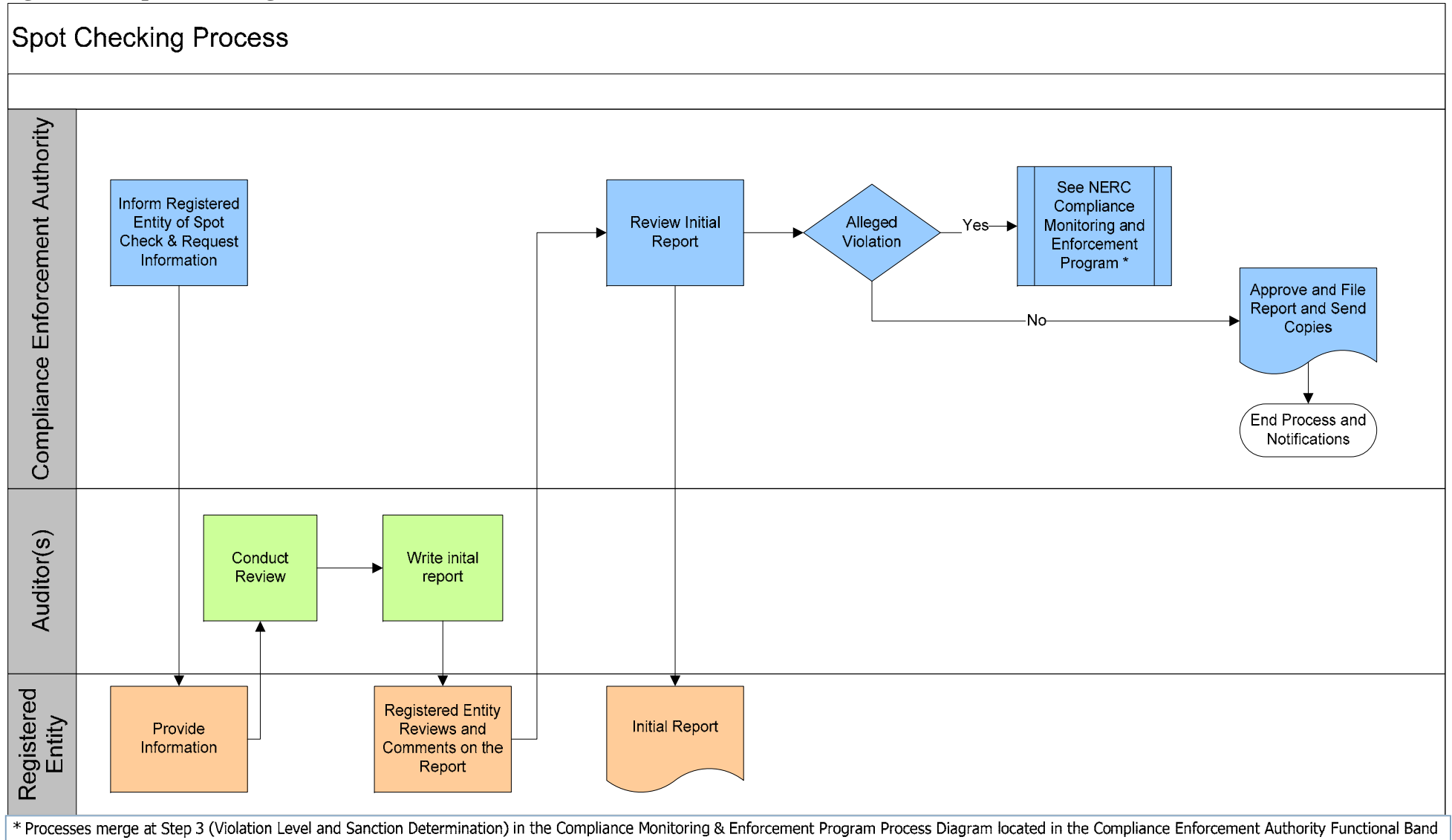
## Compliance Monitoring and Enforcement Program

- Reliability*First* completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If Reliability*First* concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Reliability*First* will notify NERC of any Alleged Violations as required by Section 8.0



# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by ReliabilityFirst or NERC, in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by ReliabilityFirst's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>4</sup> ReliabilityFirst shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation of a U.S.-related matter, NERC shall provide notice to FERC of the investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an investigation of a non-U.S.-related matter, NERC shall provide notice of the investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

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<sup>4</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Violation Investigations into matters that may cross ReliabilityFirst boundaries, (iii) where the possible violation is related to ReliabilityFirst or one of its affiliates, divisions, committees or subordinate structures, or (iv) where ReliabilityFirst determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:<sup>5</sup>

- Reliability*First* is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, Reliability*First*: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While Reliability*First* may, at its discretion, notify the Registered Entity of the reasons for its Compliance Violation Investigation, the Compliance Violation Investigation, as it unfolds, need not be limited to this scope.
- NERC assigns a NERC staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- Reliability*First* requests data or documentation and provides a list of individuals on the Compliance Violation Investigation team and their recent employment history. The Registered Entity may object to any individual on the Compliance Violation Investigation team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the Compliance Violation Investigation team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to a Compliance Violation Investigation may object to any member of the Compliance Violation Investigation team on grounds of a

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<sup>5</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to ReliabilityFirst within such ten (10) business day period. ReliabilityFirst will make a final determination as to whether the individual will participate in the Compliance Violation Investigation of the Registered Entity.

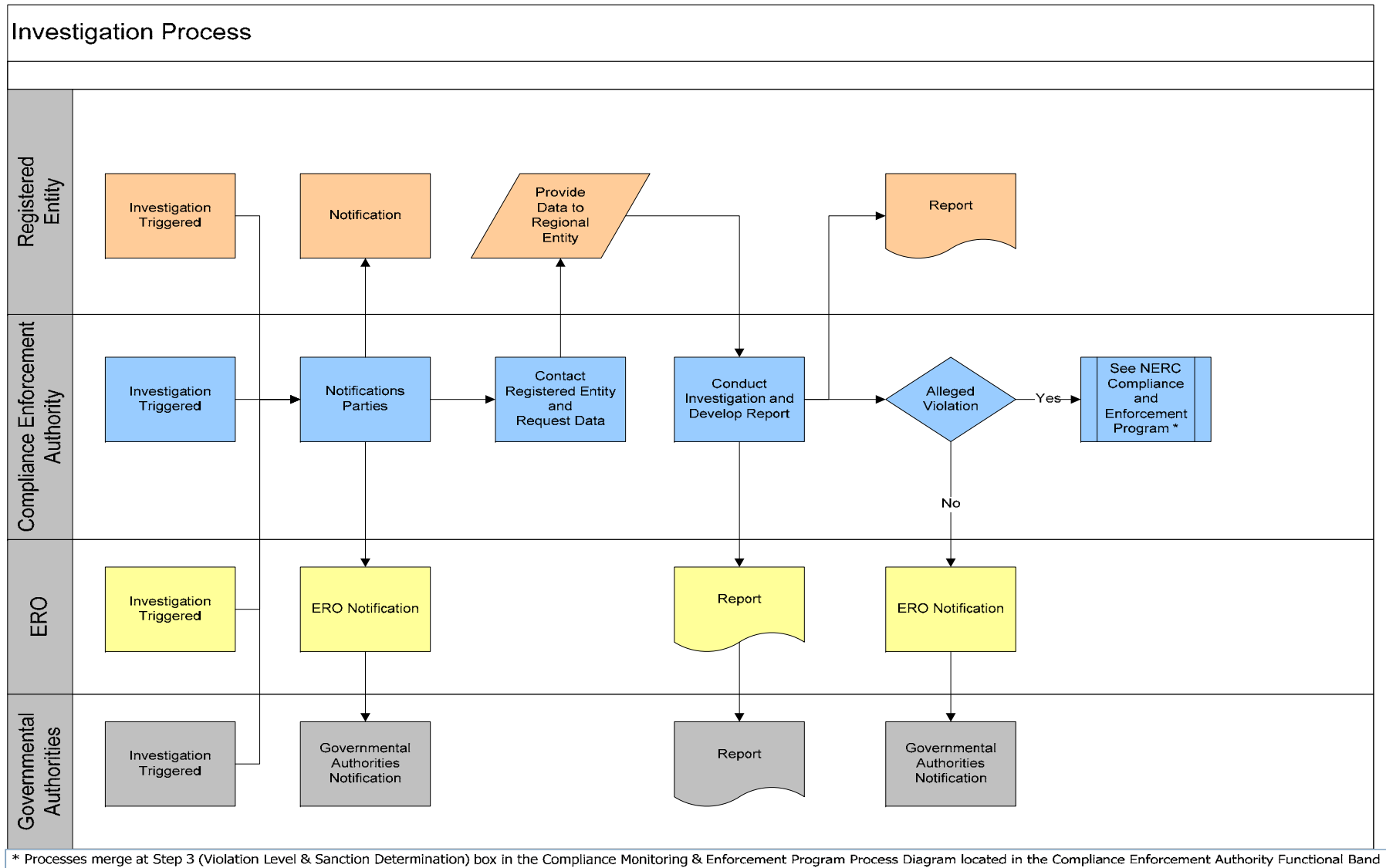
- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to ReliabilityFirst in the format as specified in the request.
- ReliabilityFirst reviews information to determine compliance with the Reliability Standards. ReliabilityFirst may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- ReliabilityFirst may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to ReliabilityFirst's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- ReliabilityFirst completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- ReliabilityFirst will notify NERC of any Alleged Violations as required by Section 8.0.
- If ReliabilityFirst determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Violation Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Violation Investigation pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public

## **Compliance Monitoring and Enforcement Program**

information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>6</sup>

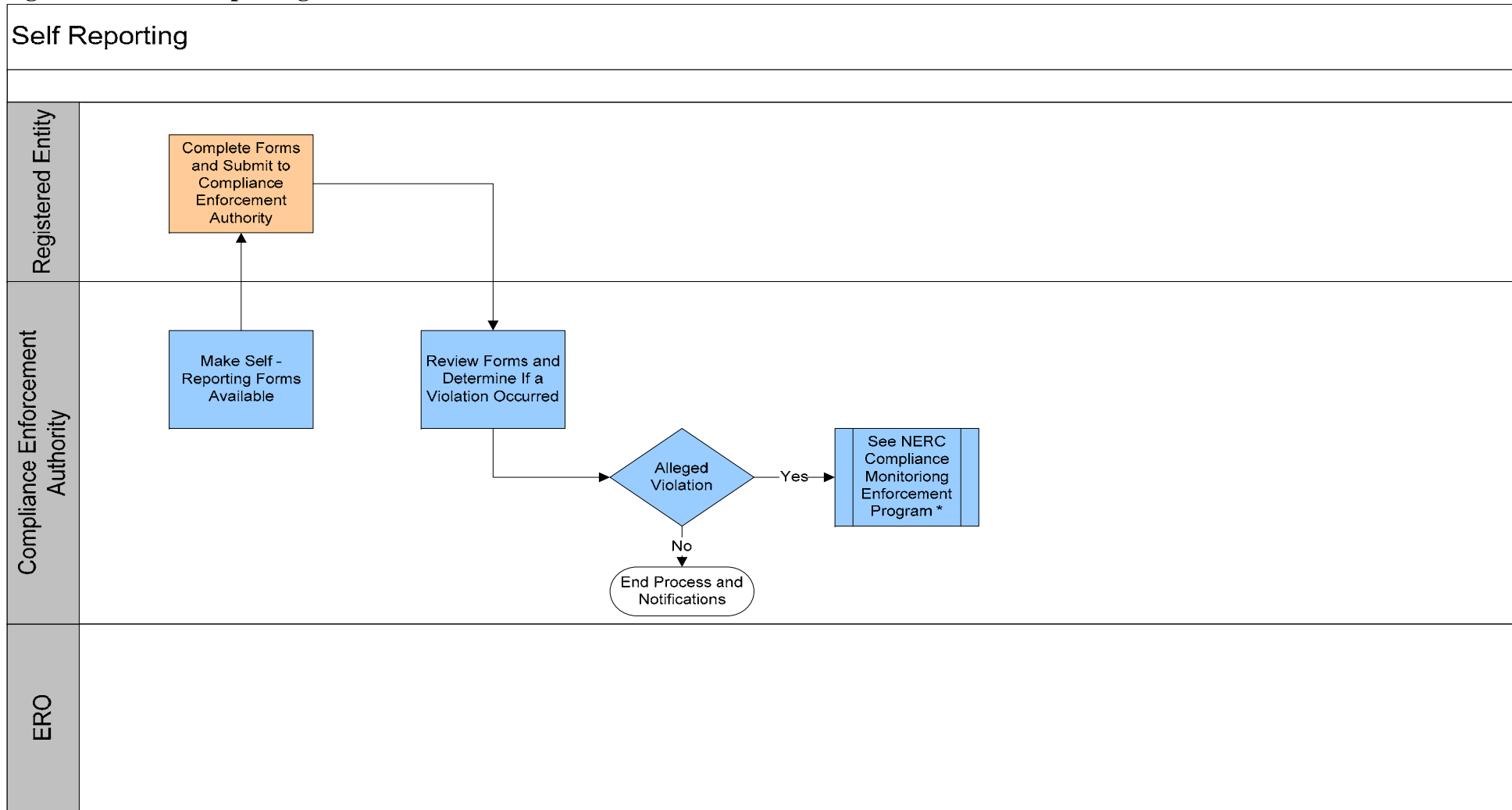
- ReliabilityFirst posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to ReliabilityFirst.
- ReliabilityFirst reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- ReliabilityFirst completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- ReliabilityFirst notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>6</sup>This process normally completes within sixty (60) days following ReliabilityFirst's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band



## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

ReliabilityFirst requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by ReliabilityFirst, or on an as-needed basis. Requests for data submittals will be issued by ReliabilityFirst to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>7</sup>

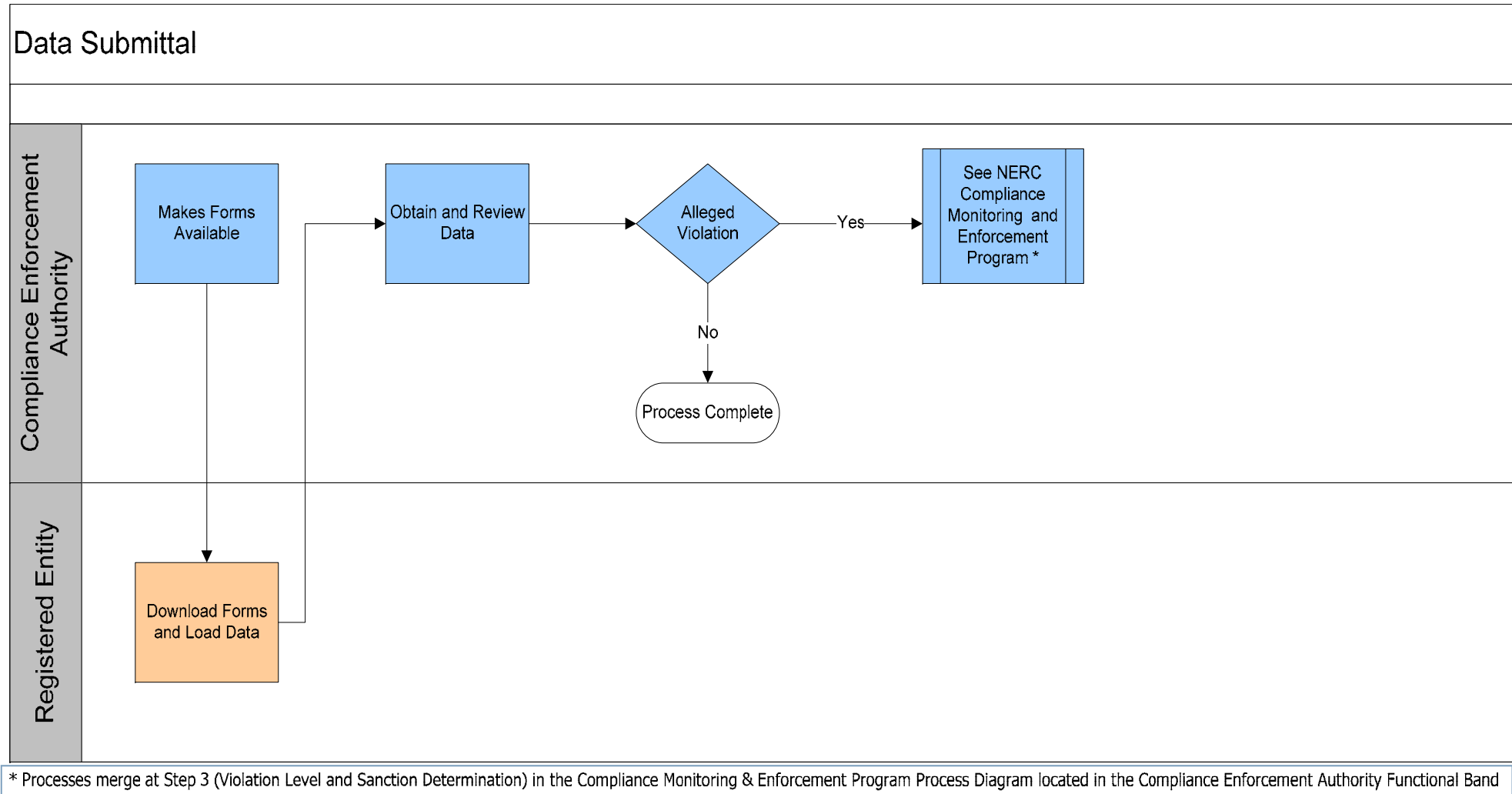
- ReliabilityFirst posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. ReliabilityFirst ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its web site.
- ReliabilityFirst makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to ReliabilityFirst in the format as specified in the request.
- ReliabilityFirst reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- ReliabilityFirst reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- ReliabilityFirst completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- ReliabilityFirst notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>If no violation(s) are found, this process generally completes within ten (10) business days of ReliabilityFirst's receipt of data.

## Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. ReliabilityFirst shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

ReliabilityFirst shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or ReliabilityFirst may receive Complaints alleging violations of a Reliability Standard. ReliabilityFirst will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to ReliabilityFirst or its affiliates, divisions, committees or subordinate structures, (2) where ReliabilityFirst determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to ReliabilityFirst, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

ReliabilityFirst conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. ReliabilityFirst will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, ReliabilityFirst determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>8</sup>

- The complainant notifies NERC or ReliabilityFirst using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and ReliabilityFirst Web sites. The Complaint should include sufficient information to enable NERC or ReliabilityFirst to make an assessment of whether the initiation of a Compliance Violation Investigation

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<sup>8</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

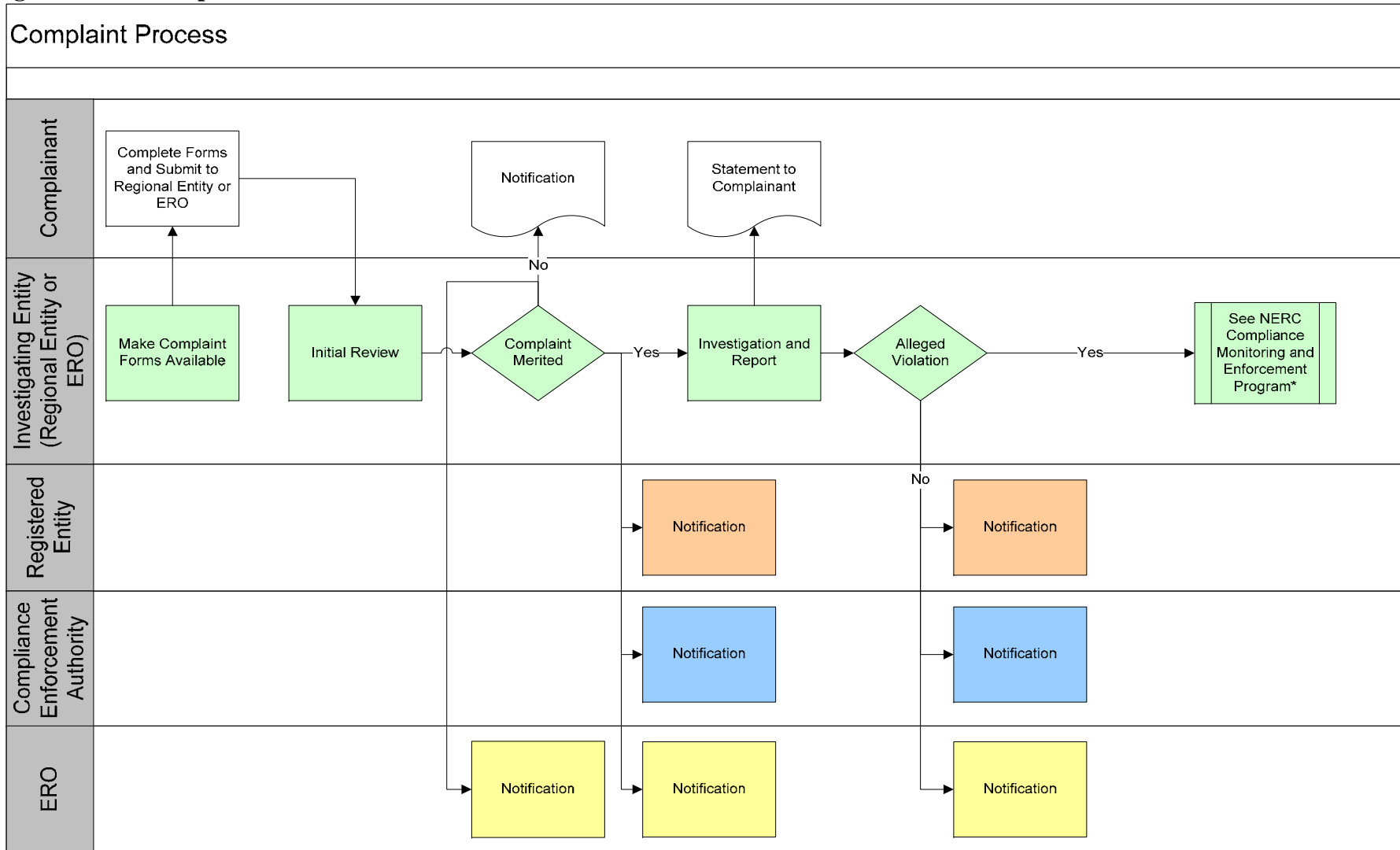
## Compliance Monitoring and Enforcement Program

is warranted. NERC or ReliabilityFirst may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If ReliabilityFirst determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. ReliabilityFirst notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If ReliabilityFirst determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- ReliabilityFirst fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

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Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## **Compliance Monitoring and Enforcement Program**

### **3.8.2 Anonymous Complainant Notification Procedure**

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>9</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by ReliabilityFirst will either be directed to NERC or the ReliabilityFirst will collect and forward the information to NERC, at ReliabilityFirst's discretion. Neither NERC nor ReliabilityFirst shall disclose the identity of any person or entity reporting possible violations to NERC or to ReliabilityFirst that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where ReliabilityFirst collects the information, by NERC and ReliabilityFirst. If ReliabilityFirst determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## **4.0 ANNUAL IMPLEMENTATION PLANS**

### **4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan**

NERC will maintain and update the NERC Implementation Plan, to be carried out by ReliabilityFirst in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the ReliabilityFirst by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to ReliabilityFirst to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### **4.2 ReliabilityFirst Implementation Plan**

By November 1 of each year, ReliabilityFirst will submit a ReliabilityFirst Implementation Plan for the following calendar year to NERC for approval. ReliabilityFirst's Implementation Plan and ReliabilityFirst's other relevant Compliance Program documents shall be posted on ReliabilityFirst's Web site.

## **5.0 ENFORCEMENT ACTIONS**

ReliabilityFirst shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within ReliabilityFirst's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by ReliabilityFirst by direct oversight and review of penalties and sanctions, and ReliabilityFirst shall provide to NERC such information as is

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<sup>9</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

requested by NERC concerning any penalty, sanction, or remedial actions imposed by the ReliabilityFirst.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

If ReliabilityFirst alleges that a Registered Entity has violated a Reliability Standard, ReliabilityFirst shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. ReliabilityFirst may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts ReliabilityFirst believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by ReliabilityFirst to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or ReliabilityFirst will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;

## Compliance Monitoring and Enforcement Program

- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedure**, and
- (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from ReliabilityFirst, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the notice of the penalty or sanction or other enforcement action will then be processed and issued to the Registered Entity.

### 5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted ReliabilityFirst's determination of violation and sanction (if applicable), in which case ReliabilityFirst shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to ReliabilityFirst a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. ReliabilityFirst shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If ReliabilityFirst and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will become a Confirmed Violation when filed by NERC with FERC or other Applicable Governmental Authority.



## Compliance Monitoring and Enforcement Program

If a hearing is requested ReliabilityFirst shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying ReliabilityFirst's designated hearing representative.<sup>10</sup>

### 5.3 Hearing Process for Compliance Hearings

ReliabilityFirst hearing process is set forth in **Attachment 2**.

### 5.4 Settlement Process

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC or another Applicable Governmental Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, ReliabilityFirst shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

ReliabilityFirst will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

ReliabilityFirst 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 ReliabilityFirst and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, ReliabilityFirst will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will (i) report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement,

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<sup>10</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by ReliabilityFirst, the Registered Entity may file a request for hearing with ReliabilityFirst.

## Compliance Monitoring and Enforcement Program

and a copy of any Mitigation Plan that is agreed to as part of the settlement. ReliabilityFirst will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:<sup>11</sup>

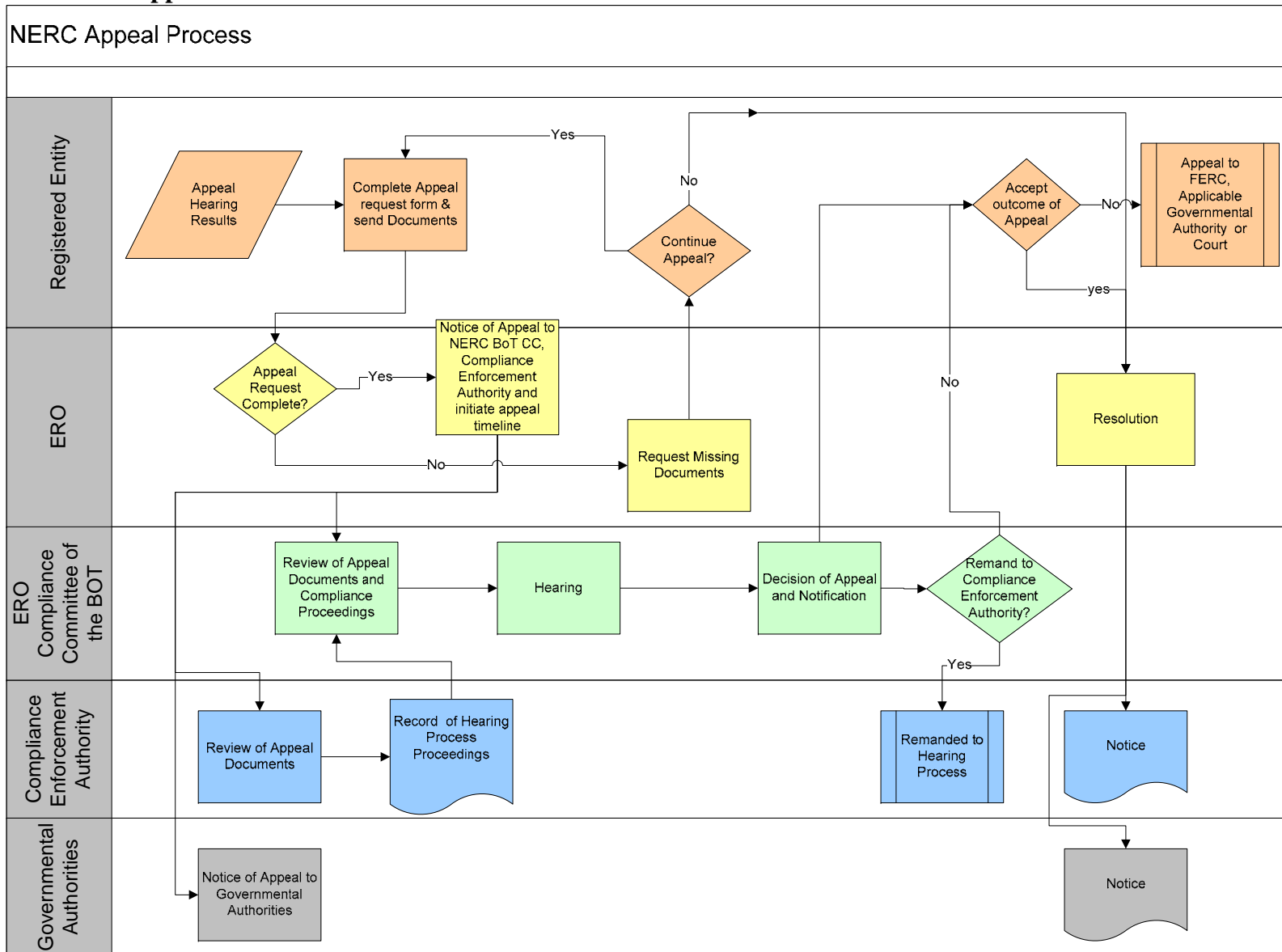
On appeal, NERC shall either affirm ReliabilityFirst's decision or remand to ReliabilityFirst with reasons for its remand, which may include a direction to ReliabilityFirst to revise the decision. If NERC directs ReliabilityFirst to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of ReliabilityFirst whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

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<sup>11</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty**

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct ReliabilityFirst to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the Regional Entity, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

## **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

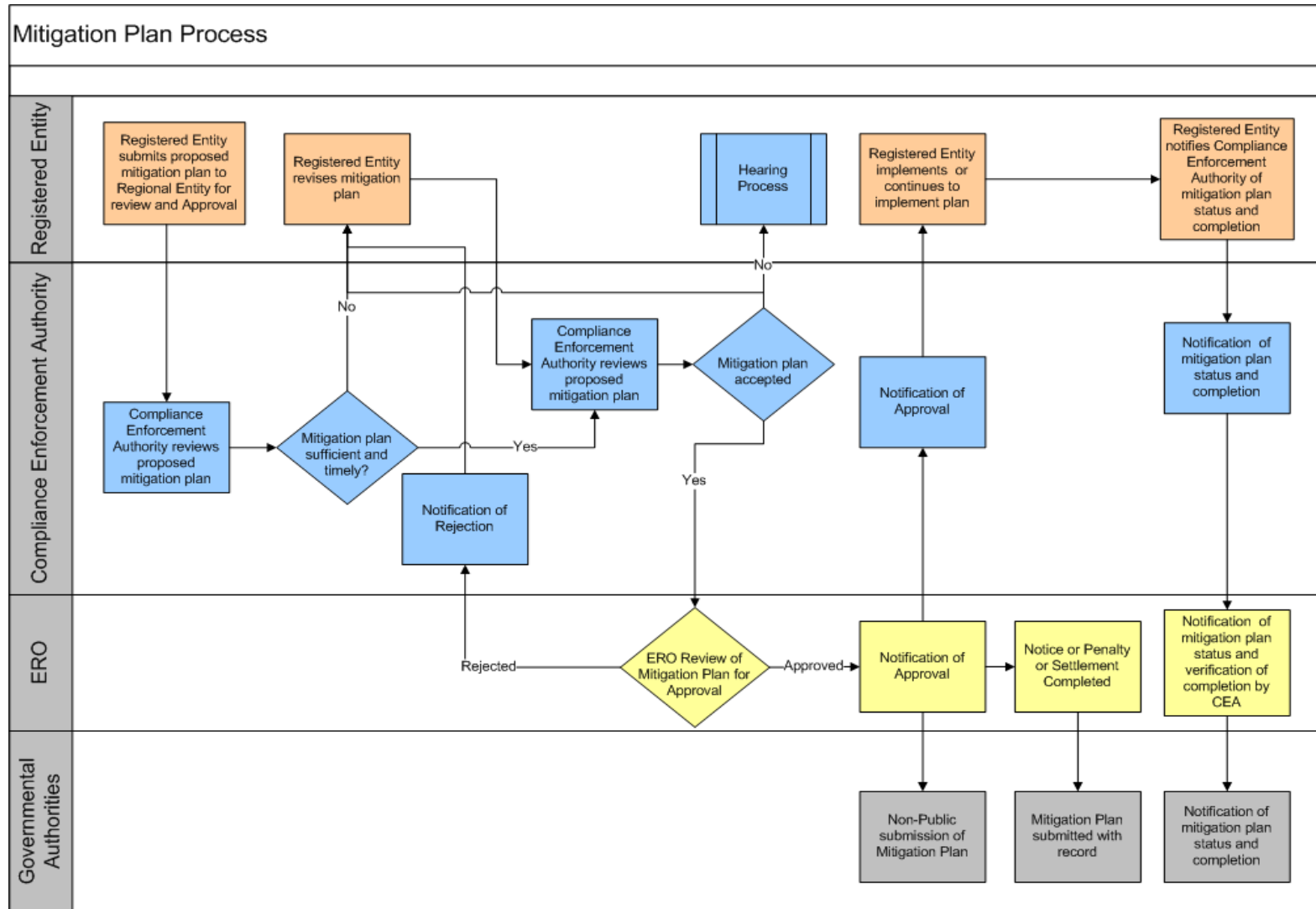
### **6.1 Requirement for Submission of Mitigation Plans**

A Registered Entity found to be in violation of a Reliability Standard shall file with ReliabilityFirst (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process



## **Compliance Monitoring and Enforcement Program**

### **6.2 Contents of Mitigation Plans**

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### **6.3 Timetable for Completion of Mitigation Plans**

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. ReliabilityFirst will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At ReliabilityFirst's discretion, the completion deadline may be extended for good cause including: (i) short assessment periods (i.e., event driven or monthly

## **Compliance Monitoring and Enforcement Program**

assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by *ReliabilityFirst* with associated sanctions or penalties. *ReliabilityFirst* will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, *ReliabilityFirst* will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. *ReliabilityFirst* will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by *ReliabilityFirst* at least five (5) business days before the original milestone or completion date. *ReliabilityFirst* may accept a request for an extension or modification of a Mitigation Plan if *ReliabilityFirst* determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by *ReliabilityFirst* or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### **6.4 Submission of Mitigation Plans**

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by *ReliabilityFirst* or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by *ReliabilityFirst* before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

## Compliance Monitoring and Enforcement Program

### 6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless extended by ReliabilityFirst, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, ReliabilityFirst shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which ReliabilityFirst will complete its review of the Mitigation Plan. ReliabilityFirst's extension notice shall also state that if ReliabilityFirst has not issued a notice by the end of the extended review period either stating that ReliabilityFirst accepts or rejects the proposed Mitigation Plan or further extending ReliabilityFirst's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If ReliabilityFirst rejects a Mitigation Plan, ReliabilityFirst will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. ReliabilityFirst will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether ReliabilityFirst will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to ReliabilityFirst a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, ReliabilityFirst will issue a written statement accepting a Mitigation Plan it deems as appropriate.

ReliabilityFirst will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from ReliabilityFirst, will notify ReliabilityFirst and the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by ReliabilityFirst, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

NERC will submit to the FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part of the public posting of a settlement in which the Registered Entity neither admits nor denies that it violated a Reliability Standard in accordance with Section 5.4.



## **Compliance Monitoring and Enforcement Program**

### **6.6 Completion/Confirmation of Implementation of Mitigation Plans**

The Registered Entity shall provide updates at least quarterly to ReliabilityFirst on the progress of the Mitigation Plan. ReliabilityFirst will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to ReliabilityFirst certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for ReliabilityFirst to verify completion. ReliabilityFirst shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by ReliabilityFirst. In addition, ReliabilityFirst may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

ReliabilityFirst will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### **6.7 Recordkeeping**

ReliabilityFirst will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.

## Compliance Monitoring and Enforcement Program

- Registered Entity's completion notice and data submitted as evidence of completion.

### 7.0 REMEDIAL ACTION DIRECTIVES

ReliabilityFirst may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. ReliabilityFirst will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, ReliabilityFirst shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. ReliabilityFirst will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. ReliabilityFirst will monitor implementation of Remedial Action Directives as necessary to verify compliance.

ReliabilityFirst will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once ReliabilityFirst has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to ReliabilityFirst within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive

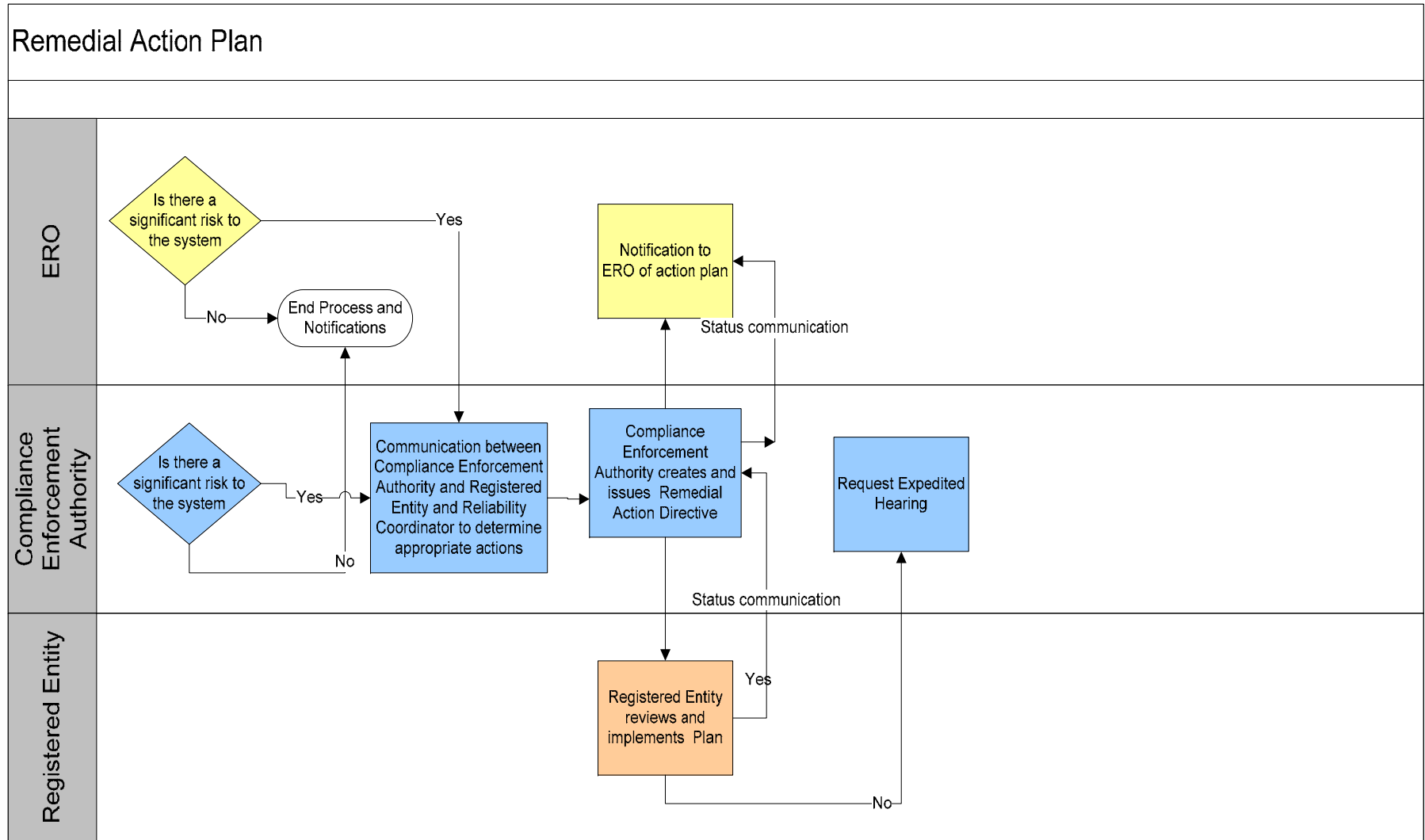
## **Compliance Monitoring and Enforcement Program**

until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.

# Compliance Monitoring and Enforcement Program

Figure 7.0 – Remedial Action Process



## Compliance Monitoring and Enforcement Program

### 8.0 REPORTING AND DISCLOSURE

ReliabilityFirst shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

ReliabilityFirst shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the ReliabilityFirst through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases ReliabilityFirst shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority, within two (2) business days of receiving such a report from ReliabilityFirst; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a ReliabilityFirst staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

ReliabilityFirst shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. ReliabilityFirst will ensure the information is current when these reports are provided.

ReliabilityFirst shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, ReliabilityFirst will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

## **Compliance Monitoring and Enforcement Program**

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by ReliabilityFirst to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its Web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

## **9.0 DATA RETENTION AND CONFIDENTIALITY**

### **9.1 Records Management**

ReliabilityFirst records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

### **9.2 Retention Requirements**

ReliabilityFirst records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, ReliabilityFirst will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under

## **Compliance Monitoring and Enforcement Program**

the Compliance Program. In providing the information and data to NERC, ReliabilityFirst shall preserve any mark of confidentiality.

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

ReliabilityFirst personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

ReliabilityFirst will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

#### PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, ReliabilityFirst may sequentially execute the following steps for each Reliability Standard for which ReliabilityFirst has requested data, information, or other reports. ReliabilityFirst however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

**Step 1:** ReliabilityFirst will issue a follow-up notification to the Registered Entity's designated contact.

**Step 2:** ReliabilityFirst will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).

**Step 3:** ReliabilityFirst will issue a follow-up notification to the Registered Entity's chief executive officer or equivalent (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).

A full Compliance Audit may be scheduled at this step.

**Step 4:** Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.

Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.



# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2

### RELIABILITYFIRST HEARING PROCEDURE

See the ReliabilityFirst Hearing Procedure for details on the implementation of the ReliabilityFirst hearing process. Subject to the authority of the hearing body to alter or extend any time periods or deadlines specified in the ReliabilityFirst Hearing Procedure and to hold such numbers of conferences and hearings as are necessary, it shall be the objective of the hearing process to complete the steps specified herein for formal compliance hearings within ninety (90) days following the issuance of written notice that the hearing body is convened.

Figure ATT-2 shows the hearing procedure steps.

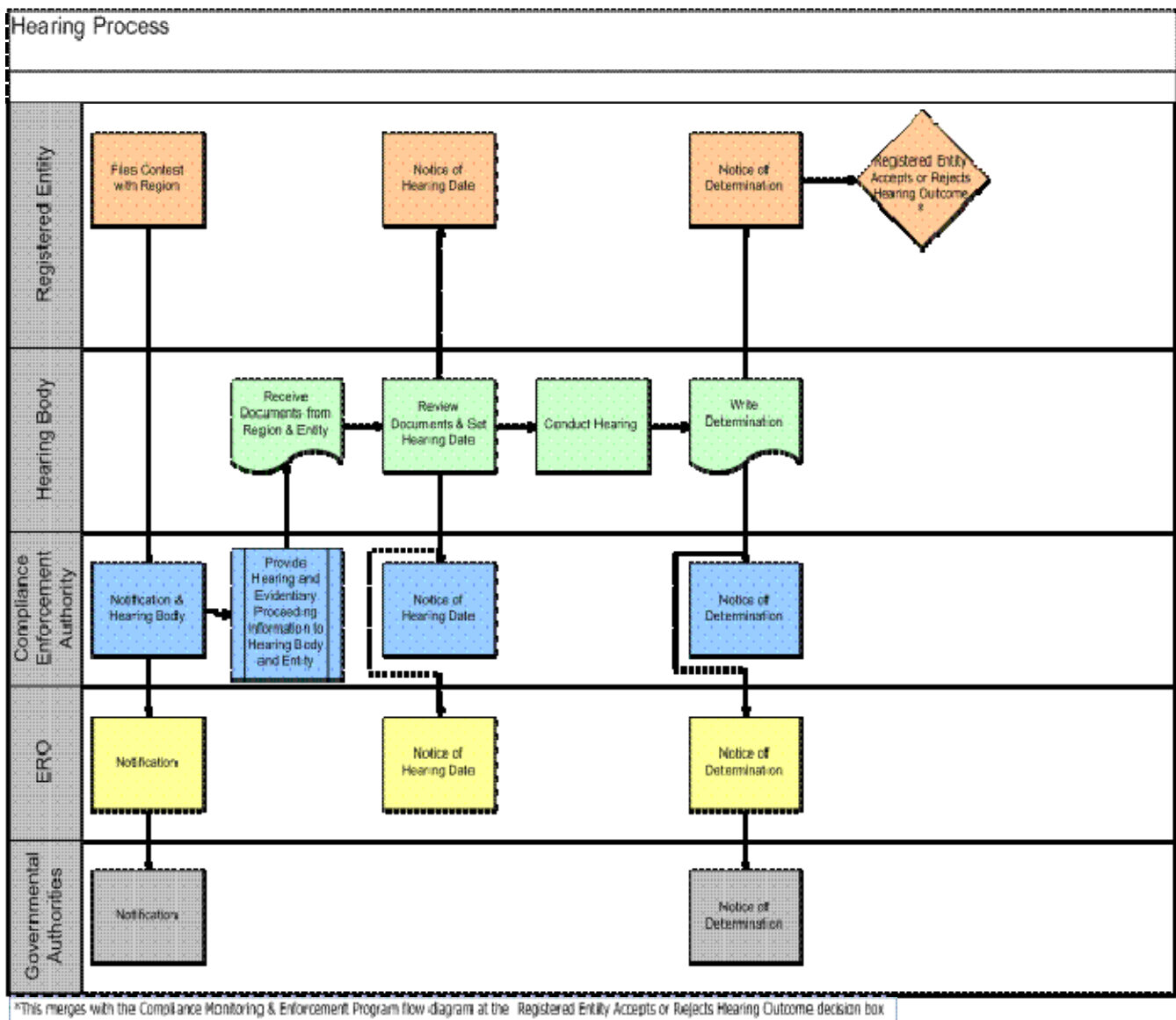


Figure ATT-2 –Hearing Procedure



# **Hearing**

# **Procedure**

**Month, Date, 2009**

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## Hearing Procedure

### 1.0 HEARING PROCEDURES

#### 1.1 Applicability, Definitions and Interpretation

##### 1.1.1 Procedure Governed

The provisions set forth herein shall apply to and govern practice and procedure before ReliabilityFirst in hearings in the United States conducted into (i) whether Registered Entities within ReliabilityFirst's area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate mitigation plans as well as any remedial actions, penalties or sanctions in accordance with applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Body established by ReliabilityFirst. The composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Body on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity's Mitigation Plan, or requiring compliance with a Remedial Action Directive.

##### 1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the Hearing Body, as defined in Paragraph 1.1.5, for good cause shown, either upon the Hearing Officer's or the Hearing Body's own motion or upon the motion of any Participant.

##### 1.1.3 Standards for Discretion

ReliabilityFirst's discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in ReliabilityFirst proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.
- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.

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- d) **Balanced Decision-Making** - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy ReliabilityFirst's conflict of interest policy.
- e) **Impartiality** - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) **Expedition** - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### 1.1.4 Interpretation

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

### 1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

“Bulk-Power System,” for the purposes of these procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk,” as designated by ReliabilityFirst.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and

## Hearing Procedure

communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

“Director of Compliance” means the Director of Compliance of ReliabilityFirst, who is responsible for the management and supervision of Compliance Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3, the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System subject to FERC review.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means a composition of members of the ReliabilityFirst Compliance Committee as established by the Board of Directors of ReliabilityFirst as set out in the ReliabilityFirst Compliance Committee Charter. No two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body either before or after any recusals or disqualifications in accordance with Paragraph 1.4.5.

“Hearing Officer” means an individual employed or contracted by ReliabilityFirst and designated by ReliabilityFirst to preside over hearings conducted pursuant to these Hearing Procedures.

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be determined in accordance with the *Sanction Guidelines of the North American Electric Reliability Council* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Mitigation Plan” means a plan to eliminate the violation of a Reliability Standard and its underlying causes.

“North American Electric Reliability Council” or “NERC” means North American Electric Reliability Corporation.



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“Registered Entity” means each user, owner and operator of the Bulk-Power System within the United States that is required to register with ReliabilityFirst pursuant to 18 C.F.R. Section 39.2.

“ReliabilityFirst’s area of responsibility” means ReliabilityFirst’s corporate region.

“Reliable Operation” has the meaning set forth in the Federal Power Act, as it may be amended from time to time.

“Reliability Standards” means standards approved by FERC pursuant to 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

“Remedial Action Directive” means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive, whichever is applicable.

“Hearing Procedure” means the procedure of ReliabilityFirst as set forth in this Paragraph 1.

“Staff” or “Compliance Staff” means individuals employed or contracted by ReliabilityFirst who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans. Staff members may participate and be represented by counsel in ReliabilityFirst proceedings, and shall have the rights and duties of any Participant. Staff members must satisfy ReliabilityFirst’s conflict of interest policy.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies ReliabilityFirst’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the Hearing Body.

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

#### **1.2.1 Contents of Filings**

All filings made with ReliabilityFirst must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;

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- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record if available; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

### 1.2.2 Form of Filings

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

### 1.2.3 Submission of Documents

- a) Where to File

Filings shall be made with the Clerk of Reliability*First* located at the principal office of Reliability*First*. The office will be open during Reliability*First*'s regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by Reliability*First*.

- b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Body. Filings will be considered made when they are date stamped received by the Clerk. To be

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timely, filings must be received no later than close of business at *ReliabilityFirst* on the date specified.

### c) How to File

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made.

Alternatively, filing by electronic means will be acceptable upon implementation of an electronic filing system by *ReliabilityFirst*.

### d) Number of Copies to File

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the Hearing Body with a copy of each filing.

### e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

### f) Verification

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the Hearing Body. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be attached to the verification explaining why a person other than the signer is providing verification.

### g) Certificate of Service

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who made the service.

## 1.2.4 Service

### a) Service List

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For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Director of Compliance and the Registered Entity's designated agent for service shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their Appearances. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

b) By Participants

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

c) By the Clerk

The Clerk shall serve all issuances of the Hearing Officer and Hearing Body upon the members of the Hearing Body and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Clerk shall transmit a copy of the record of a proceeding to the ERO at the time it serves the ERO with either (1) a Notice of Penalty, or (2) a Hearing Body Final Order that includes a Notice of Penalty.

d) Effective Date of Service

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service of a document upon the Participant, four (4) days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

### 1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which

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the Office of Reliability *First* is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the Office of Reliability *First* is closed.

### **1.2.6 Extensions of Time**

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or Hearing Body for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or Hearing Body may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

### **1.2.7 Amendments**

Amendments to any documents filed in a proceeding may be allowed by the Hearing Officer or the Hearing Body upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

### **1.2.8 Transcripts**

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

Reliability *First* will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

### **1.2.9 Rulings, Notices, Orders and Other Issuances**

Any action taken by the Hearing Officer or the Hearing Body shall be recorded in a Ruling, Notice, Order or other applicable issuance, such as a transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Body. All notices of hearings shall set forth the date, time and place of hearing.

### **1.2.10 Location of Hearings and Conferences**

All hearings, oral arguments and conferences shall be held at the principal office of Reliability *First* unless the Hearing Officer or Hearing Body elects a different location.

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### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6.

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

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to that proceeding.

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

No hearing, oral argument or meeting of the Hearing Body shall be open to the public; and no Participant filing or notice, ruling, order or any other issuance of the Hearing Officer or Hearing Body made in any proceeding shall be publicly released unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the Hearing Body, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a Notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Regional Entities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "RFC", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees *ReliabilityFirst*, including without limitation its members, Board, compliance committee, any other committees or subcommittees, Staff, contracted employees, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This "hold harmless" clause does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

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### 1.3 Initiation of the Hearing Process

#### 1.3.1 Registered Entity's Option to Request a Hearing

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these procedures, a Registered Entity may file a statement with Reliability *First* requesting a hearing if either:

- a) The Registered Entity files a Response to a Notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or
- b) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity's proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity's initial proposed Mitigation Plan.

A Registered Entity must file its hearing request within forty (40) days after (i) the Registered Entity files its Response to the Notice of Alleged Violation; or (ii) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity's proposed Mitigation Plan, whichever is applicable. If the Registered Entity does not file a hearing request within the time period set forth in this Paragraph, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the alleged violation or the Compliance Staff's rejection of the revised Mitigation Plan, whichever is applicable.

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity's proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent) requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or any other Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- a) The Registered Entity's self-report of a violation;
- b) The Notice of Alleged Violation and the Registered Entity's Response thereto; and/or

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- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejected the proposed revised Mitigation Plan.

### 1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) days after the date on which the Notice of Hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the Prehearing Conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) days after the date on which the Notice of Hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days of the Prehearing Conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all documents that Staff seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:
  - 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Registered Entity seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.



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- e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days of the Staff's reply comments filing pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days of the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "Brief on Exceptions" in accordance with Paragraph 1.7.5. No replies to Briefs on Exceptions shall be allowed.
- h) The Hearing Body shall strive, but is not required, to issue a Final Order within ninety (90) days of the Notice of Hearing.

The Hearing Officer or Hearing Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the Final Order within ninety (90) days of the Notice of Hearing.

### 1.4 General Hearing Procedure

#### 1.4.1 Notice of Hearing

Within seven (7) days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a Notice of Hearing in the docket. The Notice of Hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) days after the Notice of Hearing is issued.

#### 1.4.2 Hearing Officer

ReliabilityFirst may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Body as set forth in Paragraph 1.4.3. The Hearing Body reserves its right to attend any aspect of the hearing as a body or by individual members.

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

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Hearing Body of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, suspend or adjourn a hearing;
- 3) To separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) To modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise and issue orders concerning discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;
- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;
- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue initial opinions; and
- 11) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 Hearing Body**

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

- 1) The Hearing Body shall be entitled to receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.

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- 2) The Hearing Body or any individual member thereof shall be entitled, but not required, to attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The Hearing Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a Final Order.
- 4) The Hearing Body or any individual member thereof shall be entitled to offer upon its own motion information or documents, including books, papers, logs, graphs, maps, drawings, charts or any other written material, for submission into the evidentiary record at any time until the issuance of a Final Order; provided that the Participants shall be provided an opportunity to object to the motion seeking introduction of such information or documents into the evidentiary record, and to present testimony and other evidence in relation to such information or documents. The Hearing Body and individual members thereof shall strive to submit any such information or documents, upon motion, in a timely manner to avoid any undue delay in the hearing process. Participants shall file objections, if any, to a motion by the Hearing Body within 14 days after service of the motion. Participant objections shall clearly state the basis for the objection and may identify any evidence it seeks to introduce in response to the information or documents offered by the Hearing Body. If the Hearing Body denies the Participant's objections, or denies admission of any evidence submitted by the participant in relation to the information or documents introduced by the Hearing Body, the basis for the denial shall be explained in the Hearing Body's Final Order.
- 5) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it shall be entitled, on its own motion or upon petition for interlocutory review meeting the requirements of Paragraph 1.4.4, to reverse or modify the issuance or ruling in whole or in part, or to take any other action as may be appropriate.
- 6) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a Final Order. In issuing a Final Order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

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### 1.4.4 Interlocutory Review

A Participant shall be allowed to seek interlocutory review by the Hearing Body of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Body, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the Hearing Body within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Body.

On review of a Hearing Officer's ruling, the Hearing Body may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Body may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the Hearing Body and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Body's action taken on interlocutory review shall not be allowed. Only in exceptional circumstances shall an interlocutory review of a ruling of the Hearing Officer suspend a hearing.

A non-Participant that has been ordered by the Hearing Officer pursuant to paragraph 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Body of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to paragraph 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide document, information or testimony.

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### 1.4.5 Disqualification

A Hearing Officer, Technical Advisor or member of the Hearing Body shall recuse himself or herself from a proceeding if participation would violate ReliabilityFirst's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Body from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the ReliabilityFirst Compliance Committee shall appoint a new member(s) from among the ReliabilityFirst Board of Directors to the Hearing Body to create a quorum, which new member(s) shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter. The ReliabilityFirst Compliance Committee shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Body shall be subject to the provisions applicable herein to all Hearing Body members.

### 1.4.6 Technical Advisor

The Hearing Officer and/or the Hearing Body may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

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

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### 1.4.7 No Ex Parte Communications

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the Hearing Body, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; but
  - 2) the Hearing Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;
    - C) subject to the requirement that the substance of ruling on such issue be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling have the opportunity to state its objection on the record.
- b) This proscription does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof, provided that any member of the Compliance Staff involved in such communication may not be and may not subsequently serve as a Technical Advisor.
- c) This proscription also does not prohibit communications between members of the Hearing Body, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Body, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a Notice of Ex Parte Communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

### 1.4.8 Appearances

Participants shall file written appearances within seven (7) days of the Notice of Hearing. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, association, partnership or governmental body may appear

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by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

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

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

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such defaulting Participant. Any hearing costs incurred as a failure to appear may be assessed against such Participant.

Participants shall exercise diligence and timeliness in all actions before the Hearing Officer and the Hearing Body and in all other actions related to these Hearing Procedures. The failure of any Participant to exercise diligence or timeliness in any such actions, as determined by the Hearing Officer or Hearing Body, will be noted in the record and the Hearing Officer or Hearing Body may take such action as to promote the accomplishment of the goals of these Procedures outlined in Paragraph 1.1.3.

### **1.4.10 Consolidation of Proceedings**

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

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

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### **1.5 Prehearing Procedure**

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

#### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

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

#### **1.5.3 Summary Disposition**

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

#### **1.5.4 Status Hearings**

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



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### 1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate, including suspension of the procedural schedule to pursue settlement negotiations as set forth in ReliabilityFirst's Settlement Procedures, which are publicly available on the ReliabilityFirst website at [www.rfirst.org](http://www.rfirst.org). Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay a hearing proceeding. When the Hearing Officer grants a motion to dismiss a proceeding in whole or in part, the ruling shall set forth the rationale for the grant and shall be considered an initial opinion.

### 1.5.6 Experts

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

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

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

(1) Within five (5) days of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:

- (A) requests for information to the Respondent;
- (B) every written request, including e-mail, directed to persons not employed by ReliabilityFirst to provide documents or to be interviewed;
- (C) the documents provided in response to any such requests described in (A) and (B) above;
- (D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;
- (E) all other documents obtained from the Respondent; and

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(F) all other documents obtained from persons not employed by ReliabilityFirst.

The sole basis pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the basis set forth in Paragraph 1.5.7(b); provided however, that the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Body shall oversee the Staff's designation of documents to be produced to each Participant and the development, execution and enforcement of any protective order deemed necessary.

(3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such documents are material and relevant to the proceeding, the additional documents shall be made available to the Respondent not later than fourteen (14) days after Staff receives such documents. If the hearing is scheduled to begin, Staff shall make the additional documents available to the Respondent not less than ten (10) days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after such hearing begins, Staff shall make the additional documents available immediately to the Respondent.

(4) Nothing in subparagraph (a)(1) shall limit the discretion of ReliabilityFirst to make available any other document or the authority of the Hearing Officer to order the production of any other document.

### b) Documents That May Be Withheld

(1) Staff may withhold a document if:

(A) the document is privileged or constitutes attorney work product (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by Respondent).

(B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of ReliabilityFirst, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an

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examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, ReliabilityFirst, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

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

(2) Nothing in Subparagraph (b)(1)(B),(C) or (D) authorizes Staff to withhold a document, or a part thereof, that contains exculpatory evidence. Nothing in Subparagraph(b)(1) requires Staff to withhold a document from disclosure.

c) **Withheld Document List**

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). Upon review, the Hearing Officer may order Staff to make any document withheld available to the Respondent(s) for inspection and copying.

d) **Timing of Inspection and Copying**

Except as set forth in this Paragraph, the Hearing Officer shall determine the schedule of production of documents pursuant to this hearing procedure provided that the Hearing Officer may modify any time period for production set forth in this Paragraph as warranted by the circumstances.

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

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

(f) **Copying Costs**

A Respondent may obtain a photocopy of all documents made available for inspection. A Respondent shall be responsible for the cost of photocopying.

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Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by *ReliabilityFirst*.

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

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

### 1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing. Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (a) The provisions of Subparagraphs (d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §384.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the Hearing Body have the authority to issue orders to compel the appearance by or production of documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Body do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony.

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- (d) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony.
- (e) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the “Hearing Body”, (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference to Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Body.
- (f) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, request for admissions, or order to produce or provide specific documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- (g) A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying.
- (h) In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the Hearing Body shall determine whether the failure to make the document available was harmless error.
- (i) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- (j) Notwithstanding (f) and (i), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are

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

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant and material documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### 1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

Unless the Hearing Officer orders otherwise and with the exception (i) of any adverse Participant examination pursuant to Paragraph 1.6.16 and (ii) the testimony and documents of a non-Participant provided pursuant to an order to produce or provide documents, information or testimony, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and will be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce documents), the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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

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

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

### 1.5.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances from these proceedings, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. At any time during a proceeding, on the Hearing Officer's own motion or on the motion of any Participant or of any non-Participant ordered to produce documents, information or testimony, an order may be entered to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information, (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; or (vi) investigative files or documents that would disclose investigative techniques of Staff, ReliabilityFirst or any Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).
- c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, information or studies, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
- e) The protective order shall identify the data, information or studies that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the

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requirements, conditions or safeguards that must be met before an individual may view the information.

- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall close the hearing while the information is addressed to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

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

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

## **1.6 Evidentiary Hearing Procedure**

### **1.6.1 Evidentiary Hearings**

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

### **1.6.2 Order of Receiving Evidence**

In all proceedings, Compliance Staff shall open and close.



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### **1.6.3 Opening and Closing Statements**

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the Hearing Body. Any Participant's request for such statements, or Hearing Officer or Hearing Body notice requiring such statements, shall be made at least ten (10) days in advance of the evidentiary hearing.

### **1.6.4 Right of Participant to Present Evidence**

A Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### **1.6.5 Exhibits**

All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter, or other Hearing Officer designee, with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### **1.6.6 Witness Attendance at Evidentiary Hearing**

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Body have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall file an affidavit of the witness attesting to the veracity of the witness' testimony and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise. All testimony is to be under oath or affirmation.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant.

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Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Body, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is ReliabilityFirst's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken to provide the other Participants with a fair opportunity for response and cross-examination.

### **1.6.8 Evidence that is Part of a Book, Paper or Document**

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a copy of such matter in proper form shall be offered as an Exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.6.9 Stipulation**

The Participants may stipulate to any relevant fact or the authenticity of any relevant document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### **1.6.10 Official Notice**

The Hearing Officer may take official notice of any of the following:

- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of regional reliability entities other than ReliabilityFirst.

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- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed Reliability*First* proceedings.
- 3) State and Federal statutes and municipal and local ordinances.
- 4) The decisions of State and Federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of Reliability*First*.
- 6) All other matters of which the courts of the United States may take judicial notice.

An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit unless waived by the Participants and approved by the Hearing Officer. Any scientific or technical fact, or other information not in document form, of which notice is taken shall be set forth in a statement on the record. The Hearing Officer will afford any Participant making a timely request an opportunity to show the contrary to the matter officially noticed.

### 1.6.11 Admissibility of Evidence

Any evidence offered, including that which is included in a book, paper or document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

Generally recognized rules of evidence shall not apply. Rather, the Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. However, the Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### 1.6.12 Offer of Proof

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

### 1.6.13 Reservation of Evidentiary Ruling

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

## **Hearing Procedure**

### **1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' cross-examination, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Body. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Body. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' redirect-examination. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to do so, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the evidentiary hearing. Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

### **1.6.17 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.

## **Hearing Procedure**

- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, and the number and complexity of the issues.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### **1.7.2 Other Pleadings**

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### **1.7.3 Draft Opinions**

The Hearing Officer may permit or require Participants to file draft opinions that set forth the Participants' proposed findings of fact and conclusions of law.

### **1.7.4 Hearing Officer's Initial Opinion**

Except as otherwise ordered by the Hearing Body, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Body's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty or Mitigation Plan that the Hearing Officer proposes the Hearing Body require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be Critical Energy Infrastructure Information protected pursuant to Paragraph 1.5.10.

### **1.7.5 Exceptions**

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "Brief on Exceptions" and, within fourteen

## Hearing Procedure

(14) days after the time for filing "Briefs on Exceptions" or such other time as is set by the Hearing Officer, any Participant may file as a reply, "Brief in Reply to Exceptions."

- b) Exceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error of fact or law asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed:
  - 1) together in one brief; or
  - 2) in two separate documents, one designated as the brief containing arguments, and the other designated "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### 1.7.6 Oral Argument

The Hearing Body may elect to hear oral argument. If oral argument is held without initial briefs, Participants will be given the opportunity to present argument on all issues. If oral argument is held in addition to initial briefs, argument may be limited to issues identified by the Hearing Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

## **Hearing Procedure**

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than 48 hours prior to the time and date of oral argument.

### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Body's own motion if there is reason to believe that reopening is warranted by any changes in conditions of fact or law, or by the public interest. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes of fact or of law, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### **1.7.8 Hearing Body Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its Final Order. Issuance of a Final Order shall require (i) a quorum of the Hearing Body, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Body shall strive, but shall not be required, to issue its Final Order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The Final Order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Final Order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. If the Final Order imposes a Penalty, it shall be entitled Final Order and Notice of Penalty. The Final Order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.10. The Hearing Body shall direct the Clerk to serve the Final Order on the Participants. The service of the Final Order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### **1.7.9 The Record**

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:

- 1) Notice of Alleged Violation and Registered Entity's Response thereto;

## Hearing Procedure

- 2) Registered Entity's Proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- 3) Registered Entity's request for a hearing;
- 4) Participant filings, motions, and responses;
- 5) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- 6) Transcripts;
- 7) Evidence received;
- 8) Matters officially noticed;
- 9) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 10) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 11) Post-hearing pleadings other than briefs;
- 12) The Hearing Officer's initial opinion;
- 13) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 14) The Hearing Body's Final Order and any Notice of Penalty therewith;
- 15) All Notices of Ex Parte Communications;
- 16) Written comments submitted in lieu of written testimony;
- 17) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer of Technical Advisor and any responses or replies thereto; and
- 19) All Settlement Agreements and supporting Explanatory Statements, and Initial Opinions and Final Orders on Settlement Agreements.

### **1.7.10 Appeal**

A Final Order of the Hearing Body may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit the record of any docket to NERC that is the subject of an appealed Final Order.



## Hearing Procedure

### 1.8 Settlement

Settlements may be entered into at any time pursuant to ReliabilityFirst's Settlement Procedures, which are publicly available on the ReliabilityFirst web-site at [www.rfirst.org](http://www.rfirst.org)...

### 1.9 Remedial Action Directives

#### 1.9.1 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. ReliabilityFirst will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of ReliabilityFirst that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to ReliabilityFirst within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.9.2(a).

#### 1.9.2 Remedial Action Directive Hearing Procedure

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless a rule's context is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why

## Hearing Procedure

the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.

- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants shall not file any briefs or draft opinions, and oral argument shall not be held.
- f) The Hearing Body shall issue a summary written decision within ten (10) days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.

## Exhibit E — Funding

### 1. Scope of activities funded through the ERO funding mechanism

ReliabilityFirst shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

### 2. Allocation of Costs

ReliabilityFirst shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement. ReliabilityFirst shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate ReliabilityFirst's dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

### 3. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities identified by ReliabilityFirst covering the NERC and ReliabilityFirst budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund ReliabilityFirst's costs identified in Section 1 of this Exhibit E in four equal quarterly payments.

### 4. Application of Penalties

All penalty monies received by ReliabilityFirst, other than penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this

Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of *ReliabilityFirst* shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### 5. Budget and Funding for *ReliabilityFirst*'s Non-Statutory Activities

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such functions and activities referred to in this Section 5 as "statutory activities"), *ReliabilityFirst* performs the following other functions and activities (such other functions and activities being referred to in this Section 5 as "non-statutory activities"): **None**.

*ReliabilityFirst* shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions: **Not applicable**.

*ReliabilityFirst* shall provide its budget for such non-statutory activities to NERC at the same time that *ReliabilityFirst* submits its annual budget request to NERC pursuant to Section 1. *ReliabilityFirst*'s budget for non-statutory activities that is provided to NERC shall contain a detailed list of *ReliabilityFirst*'s non-statutory activities and a description of the funding sources for the non-statutory activities. *ReliabilityFirst* agrees that no costs of non-statutory activities are to be included in the calculation of *ReliabilityFirst*'s dues, fees, and other charges for its statutory activities.

**ATTACHMENT 5B:**

**REDLINED VERSION OF REVISED RELIABILITY*FIRST*  
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM  
AND HEARING PROCEDURES**



# COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

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## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the ReliabilityFirst Corporation (“ReliabilityFirst”) to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1 Alleged Violation: A potential violation for which ReliabilityFirst ~~has determined~~has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2 Annual Audit Plan: A plan developed annually by ReliabilityFirst that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3 Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4 Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5 Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6 Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7 Compliance Enforcement Authority: NERC or ReliabilityFirst in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8 Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.9 Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by ReliabilityFirst or NERC and

## Compliance Monitoring and Enforcement Program

will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

- 1.1.10** Exception Reporting: Information provided to ReliabilityFirst by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including a ReliabilityFirst decision, Settlement Agreement, or otherwise.
- 1.1.12** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to ReliabilityFirst in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to ReliabilityFirst on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15** ReliabilityFirst Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within ReliabilityFirst's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16** ReliabilityFirst Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be

## Compliance Monitoring and Enforcement Program

actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by ReliabilityFirst, (3) the methods to be used by ReliabilityFirst for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) ReliabilityFirst's Annual Audit Plan.

- 1.1.17** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and ReliabilityFirst Compliance Registry.
- 1.1.18** Remedial Action Directive: An action (other than a penalty or sanction) required by ReliabilityFirst that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.19** Required Date: The date given a Registered Entity in a notice from ReliabilityFirst by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.20** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by ReliabilityFirst and that are included for monitoring in the ReliabilityFirst Implementation Plan.
- 1.1.21** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.
- 1.1.22** Spot Checking: A process in which ReliabilityFirst requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

## Compliance Monitoring and Enforcement Program

### 2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

ReliabilityFirst shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. ReliabilityFirst shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within ReliabilityFirst's area of responsibility. Each Registered Entity shall inform ReliabilityFirst promptly of changes to its registration information. ReliabilityFirst shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. ReliabilityFirst shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

ReliabilityFirst will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. ReliabilityFirst will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

ReliabilityFirst shall develop, maintain, and provide to NERC a ReliabilityFirst Compliance Registry with updates as changes occur to the registry. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations or restrictions placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard.

## Compliance Monitoring and Enforcement Program

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

ReliabilityFirst will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in Sections 3.1 through 3.8 below.

Enforcement actions taken by ReliabilityFirst through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

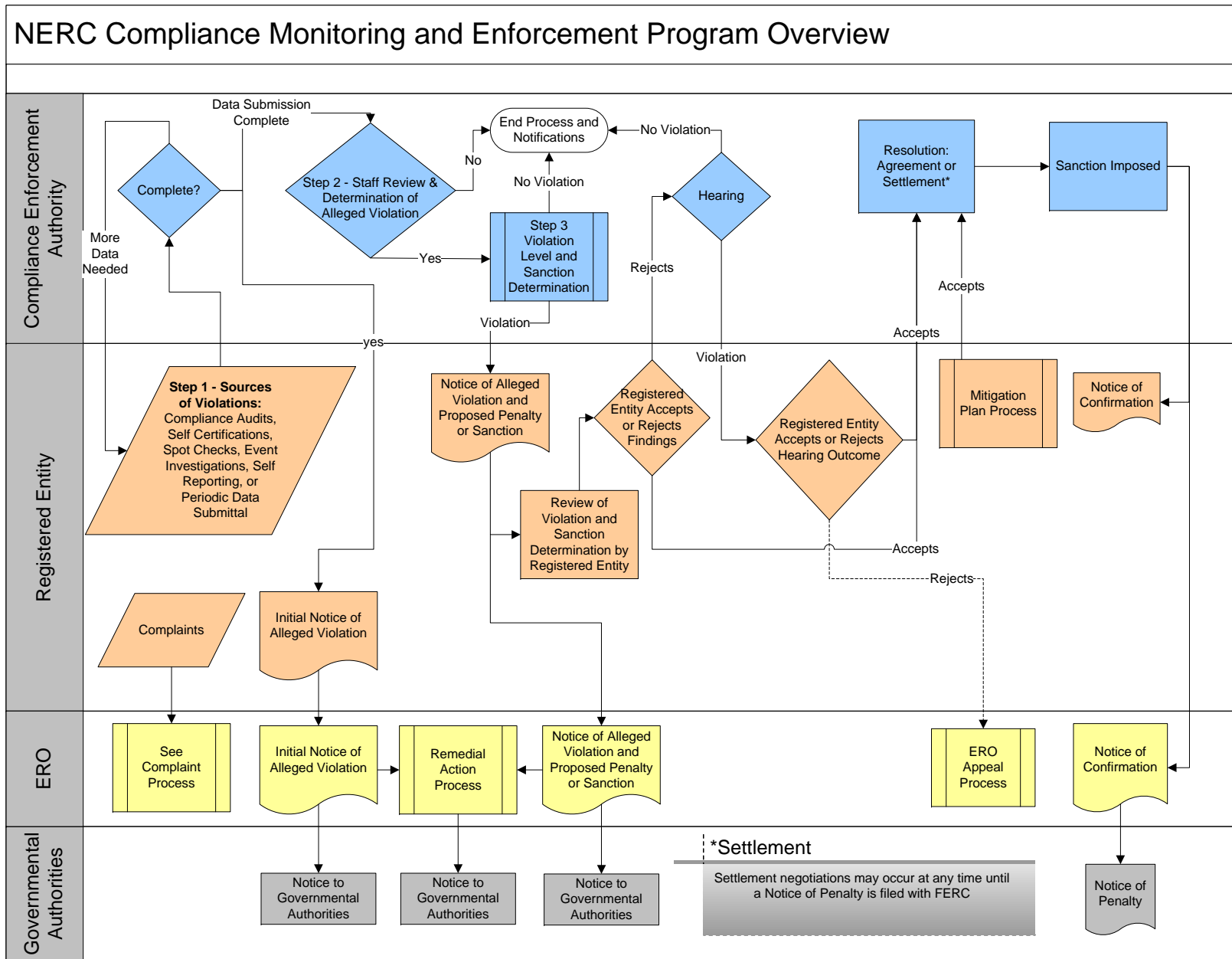
The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, ReliabilityFirst may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and ReliabilityFirst. NERC or ReliabilityFirst may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (e.g., hearing process) shown on this diagram.

# Compliance Monitoring and Enforcement Program



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted ~~Accounting~~ Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:<sup>1</sup>

- ReliabilityFirst distributes the Annual Audit ~~Plan~~ (Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. ReliabilityFirst provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, ReliabilityFirst informs the Registered Entity of the Reliability Standards to be evaluated. NERC or ReliabilityFirst provides the audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, ReliabilityFirst notifies the Registered Entity of the Compliance Audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, ReliabilityFirst will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to ReliabilityFirst the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the Compliance Audit. The audit team follows NERC audit guidelines in the implementation of the Compliance Audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an

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<sup>1</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

## Compliance Monitoring and Enforcement Program

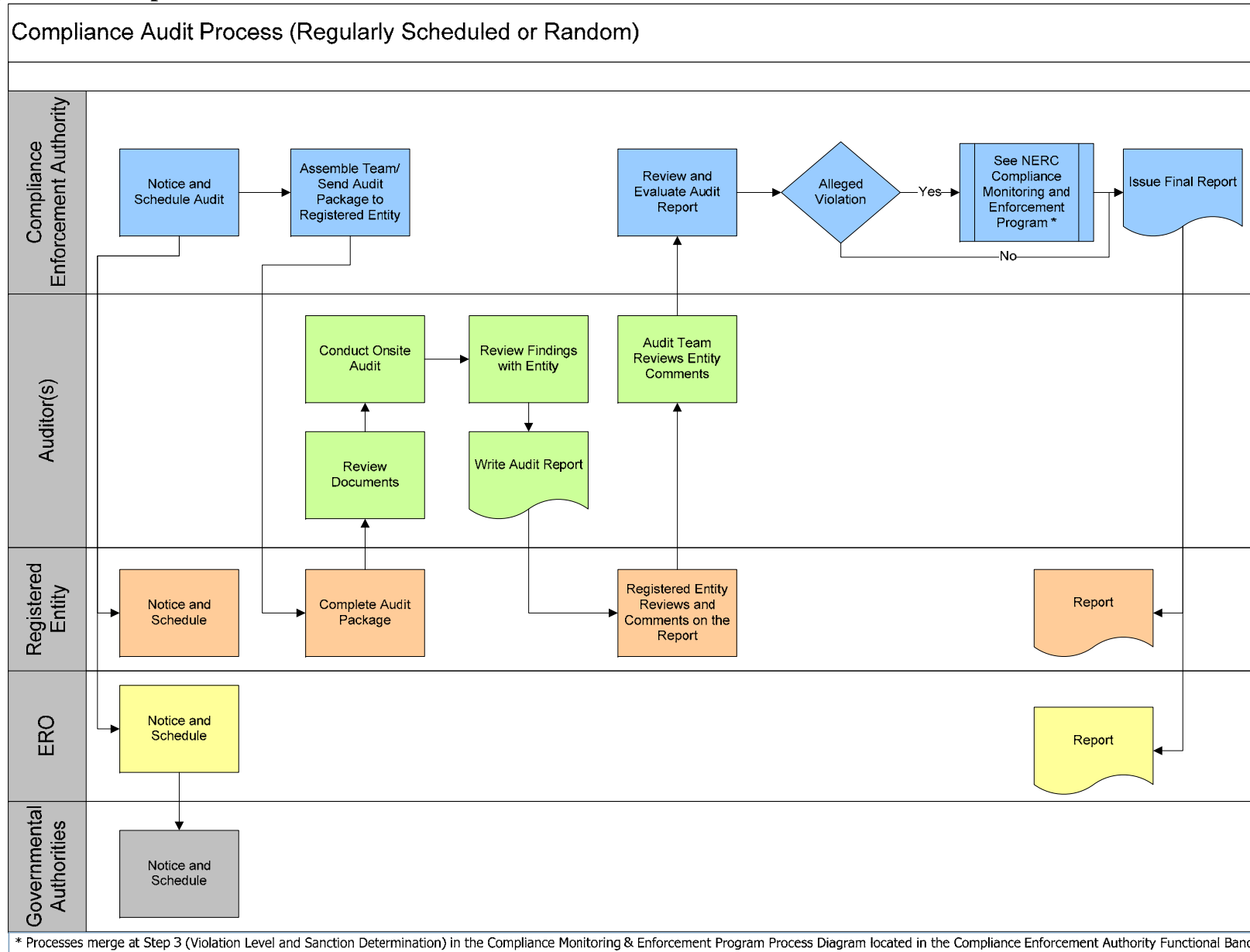
audit report, including an assessment of compliance with the Reliability Standards, to ReliabilityFirst.

- ReliabilityFirst reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- ReliabilityFirst provides the final audit report to the Registered Entity and to NERC.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- ReliabilityFirst will notify NERC of any Alleged Violations as required by Section 8.0.



# Compliance Monitoring and Enforcement Program

**Figure 3.1 – Compliance Audit Process**



## Compliance Monitoring and Enforcement Program

### 3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule

ReliabilityFirst shall develop an Annual Audit Plan. The Annual Audit Plan of ReliabilityFirst will be included in the ReliabilityFirst Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or ReliabilityFirst provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, ReliabilityFirst shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. ReliabilityFirst will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

Revisions and additions to ReliabilityFirst's Annual Audit Plan shall be approved by NERC and the Registered Entity shall be notified in a timely manner (normally 60 days in advance) of changes or revisions to scheduled audit dates.

### 3.1.3 Frequency of Compliance Audits

ReliabilityFirst will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by ReliabilityFirst if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by ReliabilityFirst or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated; ~~ReliabilityFirst;~~ ReliabilityFirst shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### 3.1.4 Scope of Compliance Audits

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### 3.1.5 Conduct of Compliance Audits

The audit team shall be comprised of staff personnel from ReliabilityFirst and may include contractors and industry volunteers as determined by ReliabilityFirst to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from ReliabilityFirst and is responsible for the conduct of the Compliance Audit and preparation of

## Compliance Monitoring and Enforcement Program

the audit report. At their discretion, NERC Compliance Staff may participate on any ReliabilityFirst Compliance Audit team either as an observer or as an audit team member as determined by ReliabilityFirst. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by ReliabilityFirst is applicable.
- Successfully complete all NERC or NERC-approved ReliabilityFirst auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to ReliabilityFirst no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to ReliabilityFirst within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to ReliabilityFirst at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit. ReliabilityFirst will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC ~~or FERC~~ or FERC staff in the Compliance Audit.

### 3.1.6 Compliance Audit Reports

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

## Compliance Monitoring and Enforcement Program

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to ReliabilityFirst who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. ReliabilityFirst will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by ReliabilityFirst in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or ReliabilityFirst until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with ReliabilityFirst pursuant to the provisions of Section 5.0.

Information deemed by ReliabilityFirst or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### 3.2 Self-Certification

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

## Compliance Monitoring and Enforcement Program

### 3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**.<sup>2</sup>

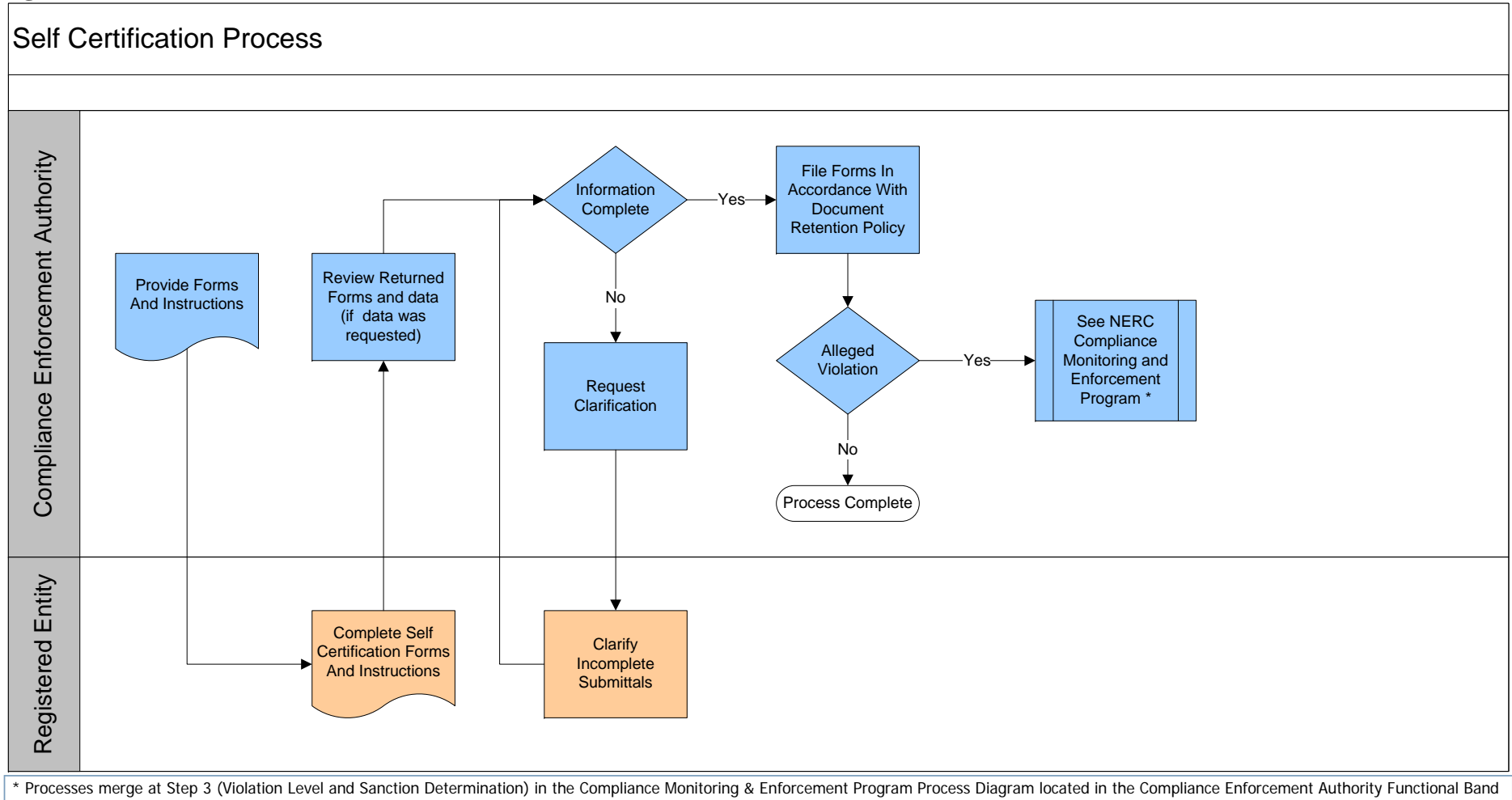
- ReliabilityFirst posts and updates the reporting schedule and informs Registered Entities. ReliabilityFirst ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- ReliabilityFirst requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to ReliabilityFirst.
- ReliabilityFirst reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- ReliabilityFirst completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- ReliabilityFirst will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>2</sup>If no non-compliances are found, this process normally completes within sixty (60) days of ReliabilityFirst's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by ReliabilityFirst. Spot Checking may be initiated by ReliabilityFirst at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. ReliabilityFirst then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. Compliance auditors may be assigned by ReliabilityFirst as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>3</sup>

- ReliabilityFirst notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by ReliabilityFirst will allow at least twenty (20) days for the information to be submitted or available for review.
- ReliabilityFirst, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by ReliabilityFirst is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking Team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to ReliabilityFirst in the format specified in the request.
- ReliabilityFirst reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- ReliabilityFirst reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of ReliabilityFirst's receipt of data.

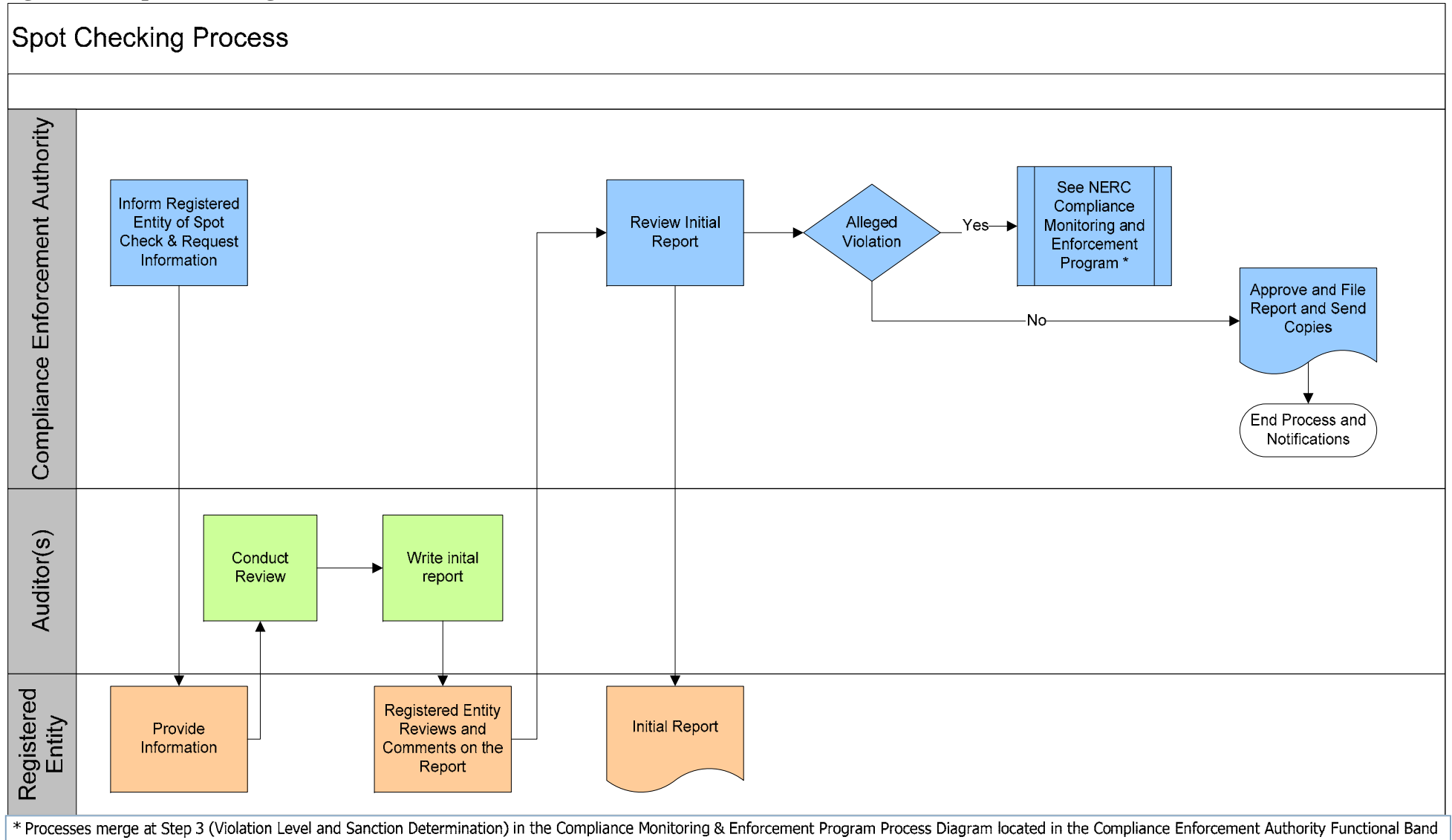
## Compliance Monitoring and Enforcement Program

- ReliabilityFirst completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- ReliabilityFirst will notify NERC of any Alleged Violations as required by Section 8.0



# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by ReliabilityFirst, ~~or NERC, FERC or another Applicable Governmental Authority~~ in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

Compliance Violation Investigations will generally be led by ReliabilityFirst's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>4</sup> ReliabilityFirst shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

~~FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein.~~ If an Applicable Governmental Authority other than FERC initiates an ~~Compliance Violation Investigation~~ investigation of a U.S.-related matter, NERC shall provide notice to FERC of the ~~Compliance Violation Investigation~~ investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall ~~identify the other Applicable Governmental Authority, shall~~ describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an ~~Compliance Violation Investigation~~ investigation of a non-U.S.-related matter, NERC shall provide notice of the ~~Compliance Violation Investigation~~ investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the ~~Compliance Violation Investigation~~ investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the ~~Compliance Violation Investigation~~ investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

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<sup>4</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate ~~Compliance Violation Investigation~~ investigations into matters that may cross ReliabilityFirst boundaries, (iii) where the possible violation is related to ReliabilityFirst or one of its affiliates, divisions, committees or subordinate structures, or (iv) where ReliabilityFirst determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1:**<sup>5</sup>

- ReliabilityFirst is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, ReliabilityFirst: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While ReliabilityFirst may, at its discretion, notify the Registered Entity of the reasons for its [Compliance Violation Investigation](#), the [Compliance Violation Investigation](#), as it unfolds, need not be limited to this scope.
- NERC assigns a NERC staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the ~~the~~ Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- ReliabilityFirst requests data or documentation and provides a list of individuals on the [Compliance Violation Investigation](#) team and their recent employment history. The Registered Entity may object to any individual on the [Compliance Violation Investigation](#) team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the [Compliance Violation Investigation](#) team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to a ~~an~~ [Compliance Violation Investigation](#) may object to any member of the [Compliance Violation Investigation](#) team on grounds of a

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<sup>5</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to ReliabilityFirst within such ten (10) business day period. ReliabilityFirst will make a final determination as to whether the individual will participate in the [Compliance Violation Investigation investigation](#) of the Registered Entity.

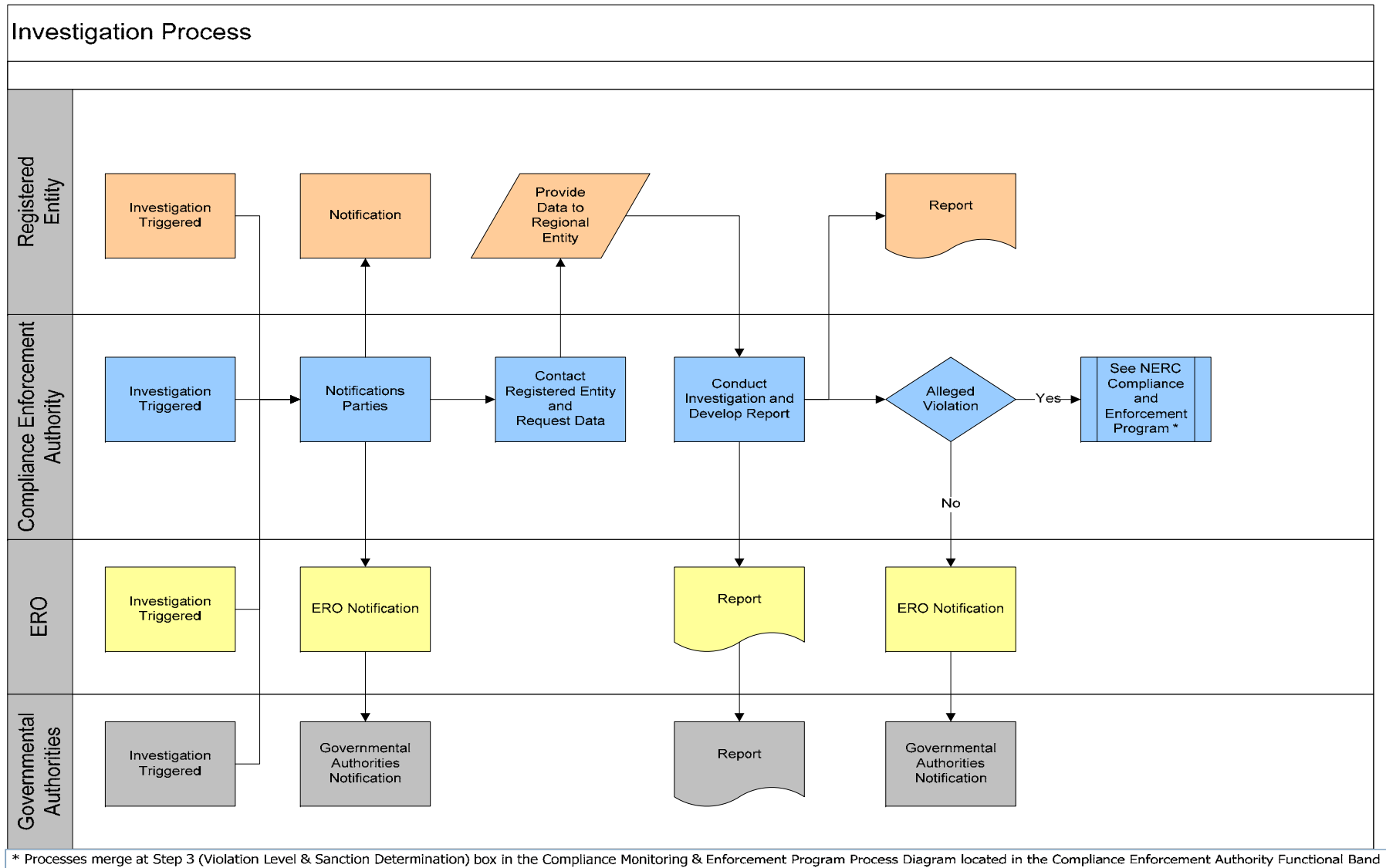
- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to ReliabilityFirst in the format as specified in the request.
- ReliabilityFirst reviews information to determine compliance with the Reliability Standards. ReliabilityFirst may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- ReliabilityFirst may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to ReliabilityFirst's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- ReliabilityFirst completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- ReliabilityFirst will notify NERC of any Alleged Violations as required by Section 8.0.
- If ReliabilityFirst determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the [Compliance Violation Investigation investigation](#) has been completed. NERC will in turn notify FERC and, if the [Compliance Violation Investigation investigation](#) pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the

## **Compliance Monitoring and Enforcement Program**

non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### ~~3.5.1 Self~~3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>6</sup>

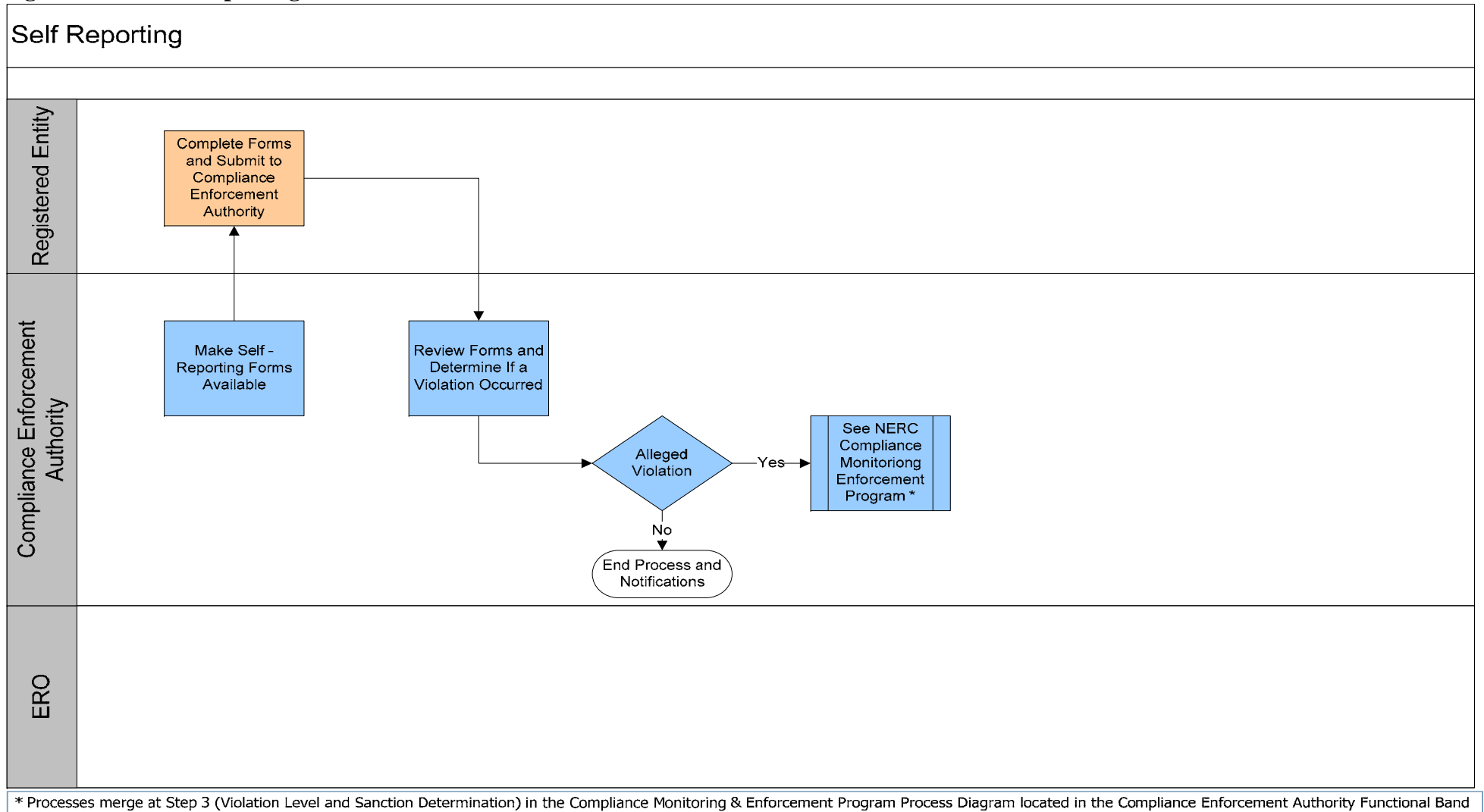
- ReliabilityFirst posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to ReliabilityFirst.
- ReliabilityFirst reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- ReliabilityFirst completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- ReliabilityFirst notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>6</sup>This process normally completes within sixty (60) days following ReliabilityFirst's receipt of data.

## Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process





## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

ReliabilityFirst requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by ReliabilityFirst, or on an as-needed basis. Requests for data submittals will be issued by ReliabilityFirst to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### ~~3.6.1 Periodic~~ 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>7</sup>

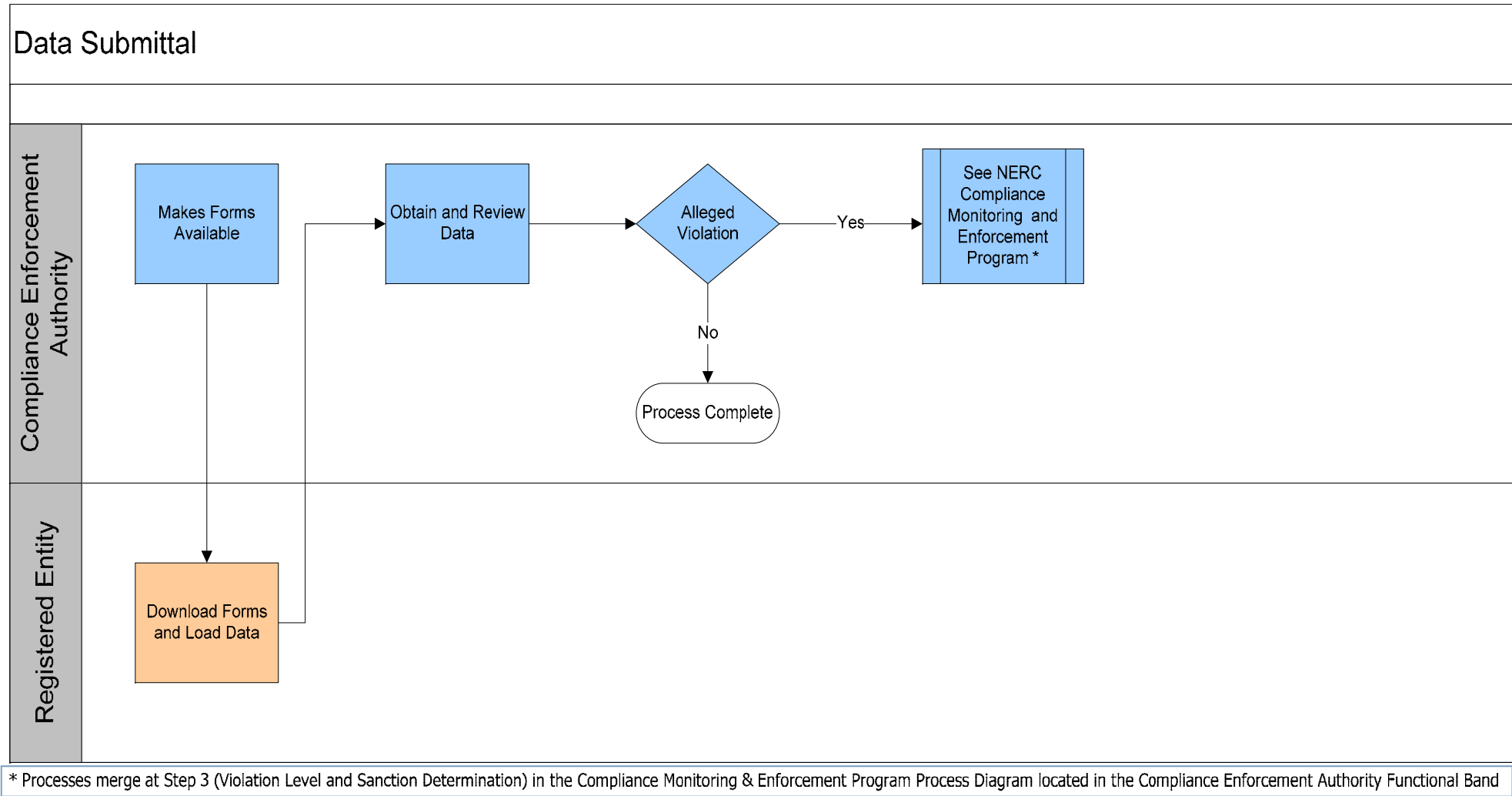
- ReliabilityFirst posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. ReliabilityFirst ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its web site.
- ReliabilityFirst makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to ReliabilityFirst in the format as specified in the request.
- ReliabilityFirst reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- ReliabilityFirst reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- ReliabilityFirst completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If ReliabilityFirst concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- ReliabilityFirst notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>If no violation(s) are found, this process generally completes within ten (10) business days of ReliabilityFirst's receipt of data.

## Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. ReliabilityFirst shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

ReliabilityFirst shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or ReliabilityFirst may receive Complaints alleging violations of a Reliability Standard. ReliabilityFirst will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to ReliabilityFirst or its affiliates, divisions, committees or subordinate structures, (2) where ReliabilityFirst determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to ReliabilityFirst, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

ReliabilityFirst conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. ReliabilityFirst will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, ReliabilityFirst determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>8</sup>

- The complainant notifies NERC or ReliabilityFirst using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and ReliabilityFirst Web sites. The Complaint should include sufficient information to enable NERC or ReliabilityFirst to make an assessment of whether the initiation of a Compliance Violation Investigation

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<sup>8</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

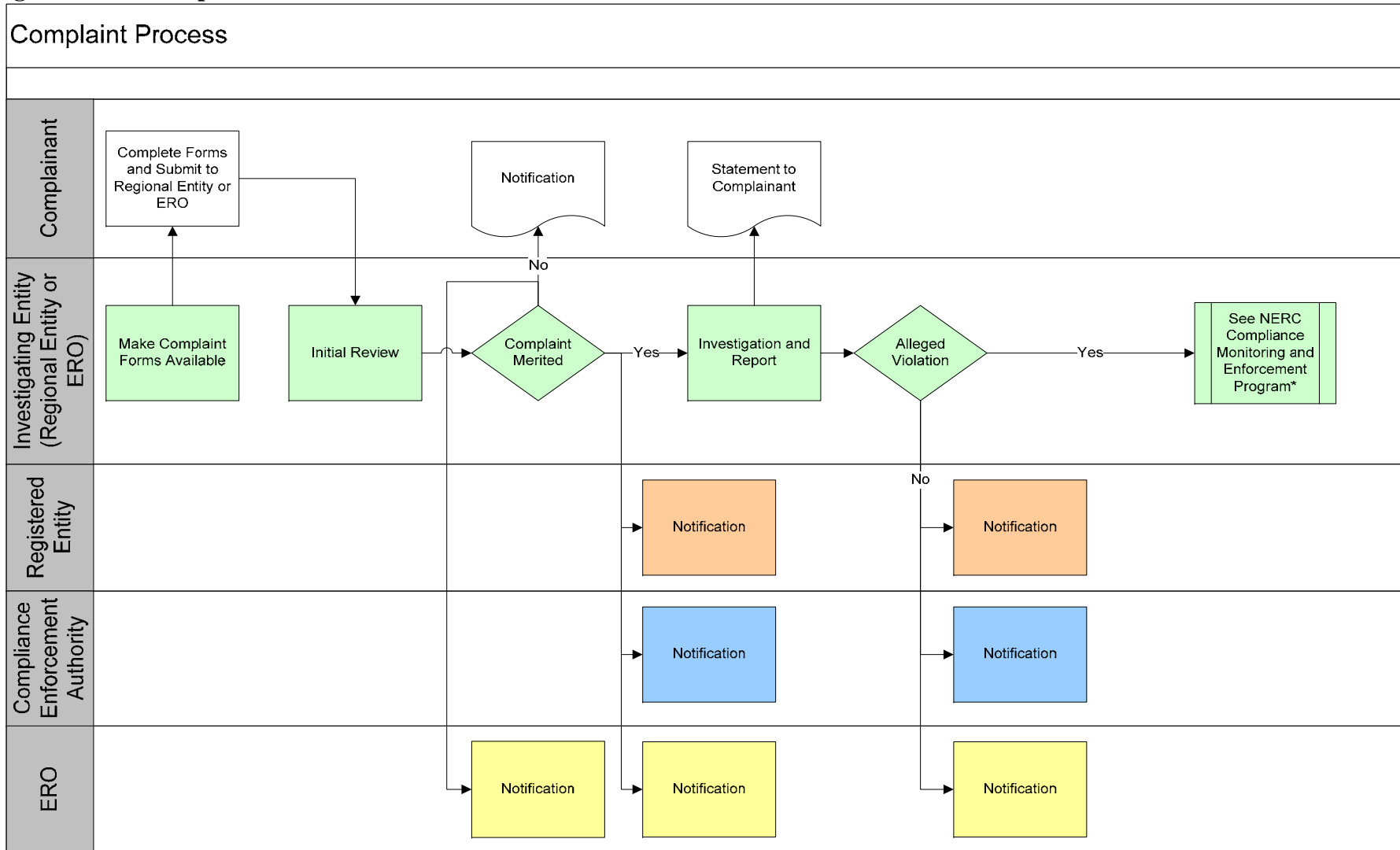
## Compliance Monitoring and Enforcement Program

is warranted. NERC or ReliabilityFirst may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If ReliabilityFirst determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. ReliabilityFirst notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If ReliabilityFirst determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- ReliabilityFirst fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## Compliance Monitoring and Enforcement Program

### 3.8.2 Anonymous Complainant Notification Procedure

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>9</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by ReliabilityFirst will either be directed to NERC or the ReliabilityFirst will collect and forward the information to NERC, at ReliabilityFirst's discretion. Neither NERC nor ReliabilityFirst shall disclose the identity of any person or entity reporting possible violations to NERC or to ReliabilityFirst that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where ReliabilityFirst collects the information, by NERC and ReliabilityFirst. If ReliabilityFirst determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## 4.0 ANNUAL IMPLEMENTATION PLANS

### 4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan

NERC will maintain and update the NERC Implementation Plan, to be carried out by ReliabilityFirst in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the ReliabilityFirst by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to ReliabilityFirst to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### 4.2 ReliabilityFirst Implementation Plan

By November 1 of each year, ReliabilityFirst will submit a ReliabilityFirst Implementation Plan for the following calendar year to NERC for approval. ReliabilityFirst's Implementation Plan and ReliabilityFirst's other relevant Compliance Program documents shall be posted on ReliabilityFirst's Web site.

## 5.0 ENFORCEMENT ACTIONS

ReliabilityFirst shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within ReliabilityFirst's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by ReliabilityFirst by direct oversight and review of penalties and sanctions, and ReliabilityFirst shall provide to NERC such information as is

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<sup>9</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

requested by NERC concerning any penalty, sanction, or remedial actions imposed by the ReliabilityFirst.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

If ReliabilityFirst alleges that a Registered Entity has violated a Reliability Standard, ReliabilityFirst shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. ReliabilityFirst may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts ReliabilityFirst believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by ReliabilityFirst to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or ReliabilityFirst will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;

## Compliance Monitoring and Enforcement Program

- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedure**, and
- (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from ReliabilityFirst, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

Upon acceptance of the Alleged Violation and proposed penalty or sanction, the notice of the penalty or sanction or other enforcement action will then be processed and issued to the Registered Entity.

### 5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted ReliabilityFirst's determination of violation and sanction (if applicable), in which case ReliabilityFirst shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to ReliabilityFirst a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. ReliabilityFirst shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If ReliabilityFirst and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will become a Confirmed Violation when filed by NERC with FERC or other Applicable Governmental Authority.



## Compliance Monitoring and Enforcement Program

If a hearing is requested ReliabilityFirst shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying ReliabilityFirst's designated hearing representative.<sup>10</sup>

### 5.3 Hearing Process for Compliance Hearings

ReliabilityFirst hearing process is set forth in **Attachment 2**.

### 5.4 Settlement Process

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC or another Applicable Governmental Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, ReliabilityFirst shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.19 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

ReliabilityFirst will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

ReliabilityFirst 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 ReliabilityFirst and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, ReliabilityFirst will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will (i) report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement.

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<sup>10</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by ReliabilityFirst, the Registered Entity may file a request for hearing with ReliabilityFirst.

## Compliance Monitoring and Enforcement Program

[and a copy of any Mitigation Plan that is agreed to as part of the settlement.](#) ReliabilityFirst will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:<sup>11</sup>

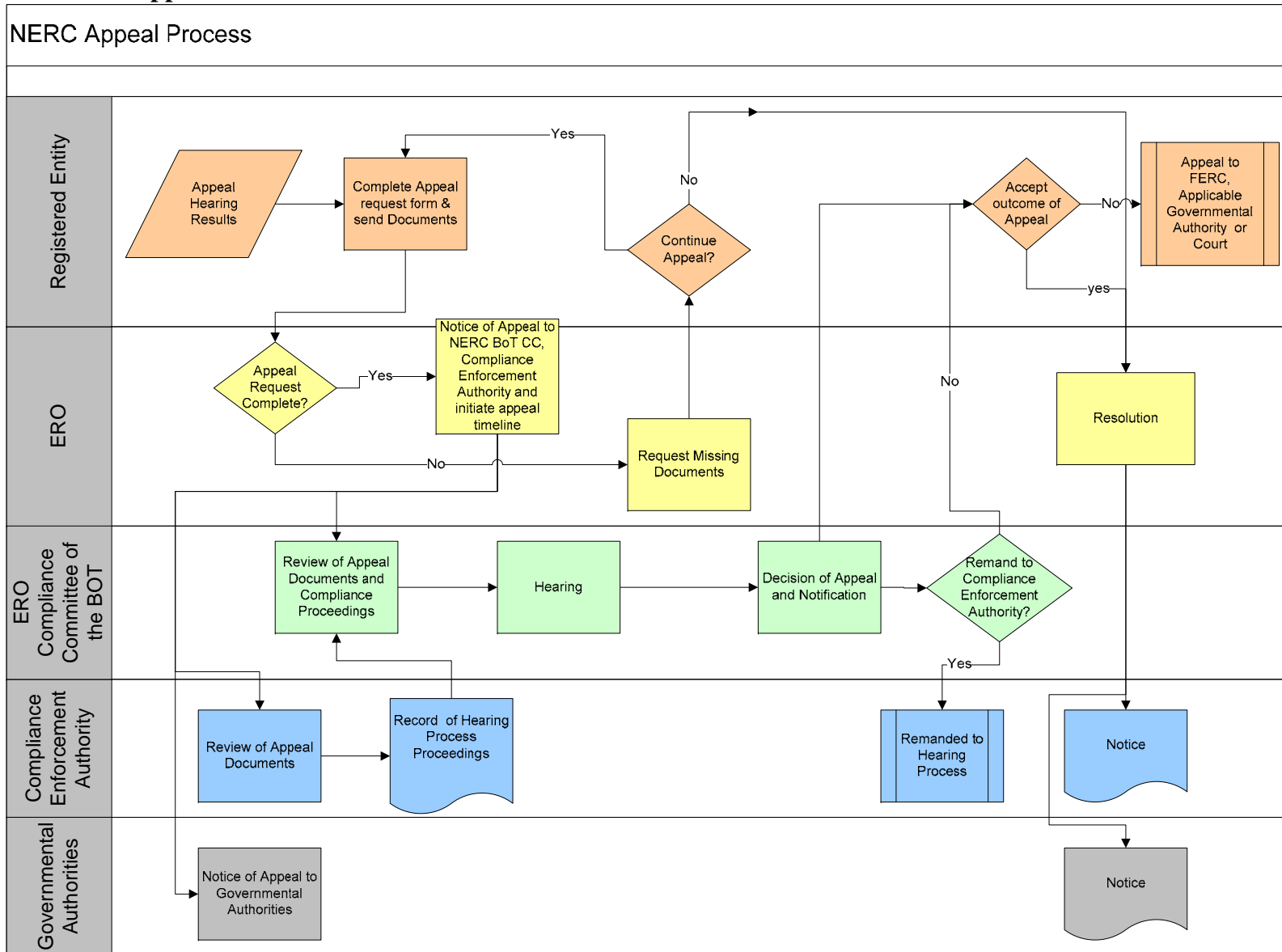
On appeal, NERC shall either affirm ReliabilityFirst's decision or remand to ReliabilityFirst with reasons for its remand, which may include a direction to ReliabilityFirst to revise the decision. If NERC directs ReliabilityFirst to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of ReliabilityFirst whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

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<sup>11</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## Compliance Monitoring and Enforcement Program

### 5.6 Notice of Penalty

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct ReliabilityFirst to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the Regional Entity, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

## 6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

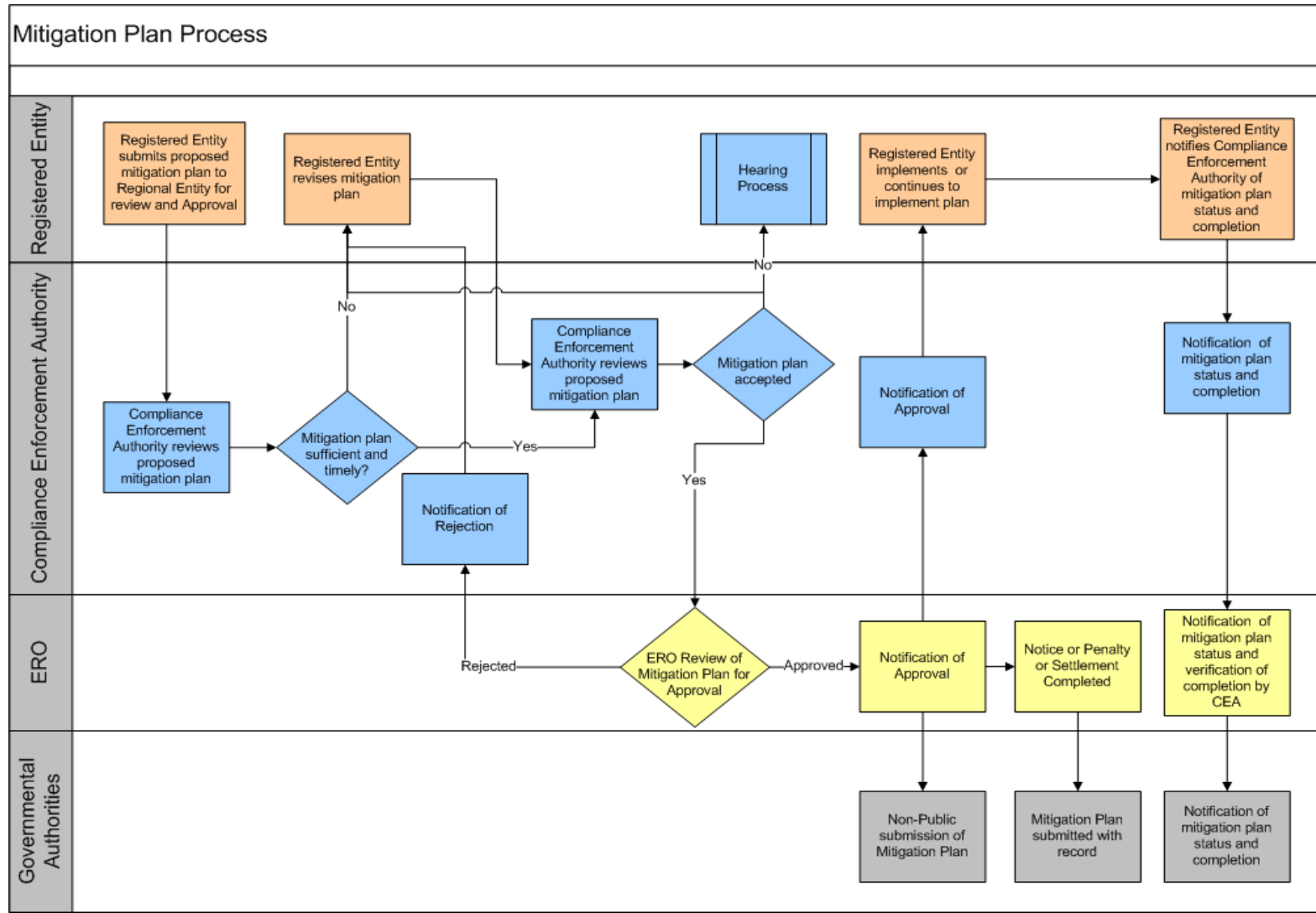
### 6.1 Requirement for Submission of Mitigation Plans

A Registered Entity found to be in violation of a Reliability Standard shall file with ReliabilityFirst (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process



## Compliance Monitoring and Enforcement Program

### 6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### 6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. ReliabilityFirst will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At ReliabilityFirst's discretion, the completion deadline may be extended for good cause including: (i) short assessment periods (i.e., event driven or monthly

## Compliance Monitoring and Enforcement Program

assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by *ReliabilityFirst* with associated sanctions or penalties. *ReliabilityFirst* will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, *ReliabilityFirst* will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. *ReliabilityFirst* will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by *ReliabilityFirst* at least five (5) business days before the original milestone or completion date. *ReliabilityFirst* may accept a request for an extension or modification of a Mitigation Plan if *ReliabilityFirst* determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by *ReliabilityFirst* or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### 6.4 Submission of Mitigation Plans

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by *ReliabilityFirst* or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by *ReliabilityFirst* before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

## Compliance Monitoring and Enforcement Program

### 6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless extended by ReliabilityFirst, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, ReliabilityFirst shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which ReliabilityFirst will complete its review of the Mitigation Plan. ReliabilityFirst's extension notice shall also state that if ReliabilityFirst has not issued a notice by the end of the extended review period either stating that ReliabilityFirst accepts or rejects the proposed Mitigation Plan or further extending ReliabilityFirst's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If ReliabilityFirst rejects a Mitigation Plan, ReliabilityFirst will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. ReliabilityFirst will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether ReliabilityFirst will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to ReliabilityFirst a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, ReliabilityFirst will issue a written statement accepting a Mitigation Plan it deems as appropriate.

ReliabilityFirst will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from ~~the ReliabilityFirst Regional Entity~~, ~~will notify ReliabilityFirst, which will in turn notify and~~ the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by ReliabilityFirst, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

NERC will submit to the FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC ~~may subsequently~~shall publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part of the public posting of a settlement in which the Registered Entity neither admits nor denies that it violated a Reliability Standard in accordance with Section 5.4.



## Compliance Monitoring and Enforcement Program

### 6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to ReliabilityFirst on the progress of the Mitigation Plan. ReliabilityFirst will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to ReliabilityFirst certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for ReliabilityFirst to verify completion. ReliabilityFirst shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by ReliabilityFirst. In addition, ReliabilityFirst may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

ReliabilityFirst will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### 6.7 Recordkeeping

ReliabilityFirst will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.

## Compliance Monitoring and Enforcement Program

- Registered Entity's completion notice and data submitted as evidence of completion.

### 7.0 REMEDIAL ACTION DIRECTIVES

ReliabilityFirst may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. ReliabilityFirst will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, ReliabilityFirst shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. ReliabilityFirst will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. ReliabilityFirst will monitor implementation of Remedial Action Directives as necessary to verify compliance.

ReliabilityFirst will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once ReliabilityFirst has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to ReliabilityFirst within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedure** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive

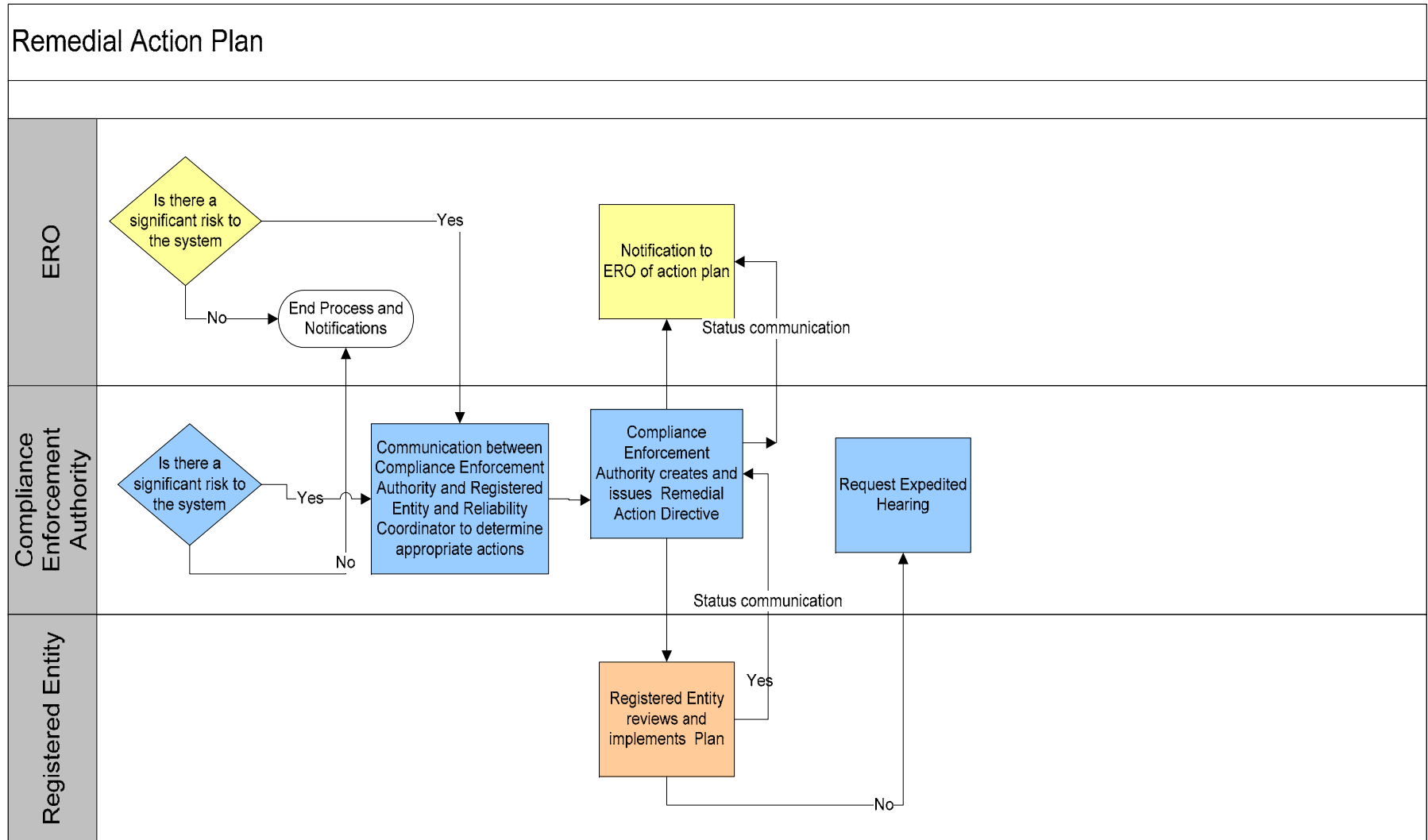
## **Compliance Monitoring and Enforcement Program**

until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.

# Compliance Monitoring and Enforcement Program

Figure 7.0 – Remedial Action Process



## Compliance Monitoring and Enforcement Program

### 8.0 REPORTING AND DISCLOSURE

ReliabilityFirst shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

ReliabilityFirst shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation, that are received or obtained by the ReliabilityFirst through any means within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases ReliabilityFirst shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority, within two (2) business days of receiving such a report from ReliabilityFirst; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a ReliabilityFirst staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b).

ReliabilityFirst shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. ReliabilityFirst will ensure the information is current when these reports are provided.

ReliabilityFirst shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements, within ten (10) business days of each determination. At the same time, ReliabilityFirst will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

## **Compliance Monitoring and Enforcement Program**

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by ReliabilityFirst to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC places on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its Web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

ReliabilityFirst records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

ReliabilityFirst records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, ReliabilityFirst will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under

## **Compliance Monitoring and Enforcement Program**

the Compliance Program. In providing the information and data to NERC, ReliabilityFirst shall preserve any mark of confidentiality.

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

ReliabilityFirst personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

ReliabilityFirst will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

#### PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, ReliabilityFirst may sequentially execute the following steps for each Reliability Standard for which ReliabilityFirst has requested data, information, or other reports. ReliabilityFirst however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues.

**Step 1:** ReliabilityFirst will issue a follow-up notification to the Registered Entity's designated contact.

**Step 2:** ReliabilityFirst will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).

**Step 3:** ReliabilityFirst will issue a follow-up notification to the Registered Entity's chief executive officer or equivalent (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).

A full Compliance Audit may be scheduled at this step.

**Step 4:** Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.

Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.



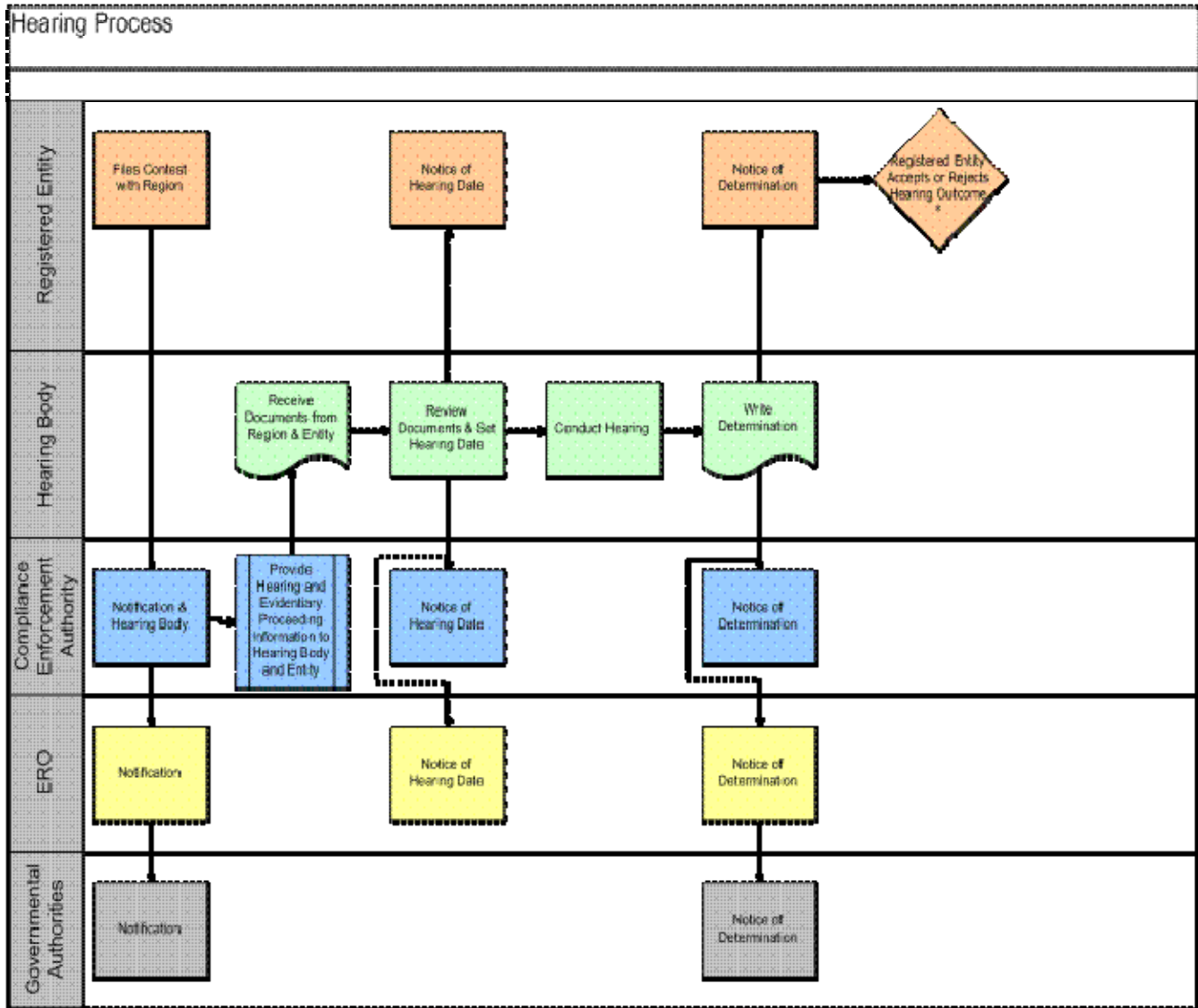
# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2

### COMPLIANCE ENFORCEMENT AUTHORITY RELIABILITY FIRST HEARING PROCEDURE

See the ReliabilityFirst Hearing Procedure for details on the implementation of the ReliabilityFirst hearing process. Subject to the authority of the hearing body to alter or extend any time periods or deadlines specified in the ReliabilityFirst Hearing Procedure and to hold such numbers of conferences and hearings as are necessary, it shall be the objective of the hearing process to complete the steps specified herein for formal compliance hearings within ninety (90) days following the issuance of written notice that the hearing body is convened.

Figure ATT-2 shows the hearing procedure steps.



\*This merges with the Compliance Monitoring & Enforcement Program flow diagram at the Registered Entity Accepts or Rejects Hearing Outcome decision box

# Compliance Monitoring and Enforcement Program

## Figure ATT-2 –Hearing Procedure



Marked for revisions for December 19, 2008  
FERC Order

# Hearing

# Procedure

Month, Date, ~~2008~~2009

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## Hearing Procedure

### 1.0 HEARING PROCEDURES

#### 1.1 Applicability, Definitions and Interpretation

##### 1.1.1 Procedure Governed

The provisions set forth herein shall apply to and govern practice and procedure before ReliabilityFirst in hearings in the United States conducted into (i) whether Registered Entities within ReliabilityFirst's area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate mitigation plans as well as any remedial actions, penalties or sanctions in accordance with applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Body established by ReliabilityFirst. The composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Body on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity's Mitigation Plan, or requiring compliance with a Remedial Action Directive.

##### 1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the Hearing Body, as defined in Paragraph 1.1.5, for good cause shown, either upon the Hearing Officer's or the Hearing Body's own motion or upon the motion of any Participant.

##### 1.1.3 Standards for Discretion

ReliabilityFirst's discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in ReliabilityFirst proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.
- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.

## Hearing Procedure

- d) **Balanced Decision-Making** - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy ReliabilityFirst's conflict of interest policy.
- e) **Impartiality** - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) **Expedition** - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### 1.1.4 Interpretation

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

### 1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

“Bulk-Power System,” for the purposes of these procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk,” as designated by ReliabilityFirst.

“Critical infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; and (iii) does not simply give the location of the critical infrastructure.

“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and



## Hearing Procedure

communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

“Director of Compliance” means the Director of Compliance of ReliabilityFirst, who is responsible for the management and supervision of Compliance Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3, the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System subject to FERC review.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means a composition of members of the ReliabilityFirst Compliance Committee as established by the Board of Directors of ReliabilityFirst as set out in the ReliabilityFirst Compliance Committee Charter. No two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body either before or after any recusals or disqualifications in accordance with Paragraph 1.4.5.

“Hearing Officer” means an individual employed or contracted by ReliabilityFirst and designated by ReliabilityFirst to preside over hearings conducted pursuant to these Hearing Procedures.

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be determined in accordance with the *Sanction Guidelines of the North American Electric Reliability Council* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Mitigation Plan” means a plan to eliminate the violation of a Reliability Standard and its underlying causes.

“North American Electric Reliability Council” or “NERC” means North American Electric Reliability Corporation.

## Hearing Procedure

“Registered Entity” means each user, owner and operator of the Bulk-Power System within the United States that is required to register with ReliabilityFirst pursuant to 18 C.F.R. Section 39.2.

“ReliabilityFirst’s area of responsibility” means ReliabilityFirst’s corporate region.

“Reliable Operation” has the meaning set forth in the Federal Power Act, as it may be amended from time to time.

“Reliability Standards” means standards approved by FERC pursuant to 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

“Remedial Action Directive” means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive, whichever is applicable.

“Hearing Procedure” means the procedure of ReliabilityFirst as set forth in this Paragraph 1.

“Staff” or “Compliance Staff” means individuals employed or contracted by ReliabilityFirst who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans. Staff members may participate and be represented by counsel in ReliabilityFirst proceedings, and shall have the rights and duties of any Participant. Staff members must satisfy ReliabilityFirst’s conflict of interest policy.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies ReliabilityFirst’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the Hearing Body.

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

#### **1.2.1 Contents of Filings**

All filings made with ReliabilityFirst must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;

## Hearing Procedure

- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record if available; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

### 1.2.2 Form of Filings

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

### 1.2.3 Submission of Documents

- a) Where to File

Filings shall be made with the Clerk of Reliability*First* located at the principal office of Reliability*First*. The office will be open during Reliability*First*'s regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by Reliability*First*.

- b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Body. Filings will be considered made when they are date stamped received by the Clerk. To be

## Hearing Procedure

timely, filings must be received no later than close of business at *ReliabilityFirst* on the date specified.

### c) How to File

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made.

Alternatively, filing by electronic means will be acceptable upon implementation of an electronic filing system by *ReliabilityFirst*.

### d) Number of Copies to File

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the Hearing Body with a copy of each filing.

### e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

### f) Verification

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the Hearing Body. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be attached to the verification explaining why a person other than the signer is providing verification.

### g) Certificate of Service

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who made the service.

## 1.2.4 Service

### a) Service List

## Hearing Procedure

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Director of Compliance and the Registered Entity's designated agent for service shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their Appearances. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

b) By Participants

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

c) By the Clerk

The Clerk shall serve all issuances of the Hearing Officer and Hearing Body upon the members of the Hearing Body and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Clerk shall transmit a copy of the record of a proceeding to the ERO at the time it serves the ERO with either (1) a Notice of Penalty, or (2) a Hearing Body Final Order that includes a Notice of Penalty.

d) Effective Date of Service

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service of a document upon the Participant, four (4) days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

### 1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which

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the Office of Reliability *First* is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the Office of Reliability *First* is closed.

### **1.2.6 Extensions of Time**

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or Hearing Body for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or Hearing Body may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

### **1.2.7 Amendments**

Amendments to any documents filed in a proceeding may be allowed by the Hearing Officer or the Hearing Body upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

### **1.2.8 Transcripts**

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

Reliability *First* will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

### **1.2.9 Rulings, Notices, Orders and Other Issuances**

Any action taken by the Hearing Officer or the Hearing Body shall be recorded in a Ruling, Notice, Order or other applicable issuance, such as a transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Body. All notices of hearings shall set forth the date, time and place of hearing.

### **1.2.10 Location of Hearings and Conferences**

All hearings, oral arguments and conferences shall be held at the principal office of Reliability *First* unless the Hearing Officer or Hearing Body elects a different location.

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### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6.

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

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to that proceeding.

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

No hearing, oral argument or meeting of the Hearing Body shall be open to the public; and no Participant filing or notice, ruling, order or any other issuance of the Hearing Officer or Hearing Body made in any proceeding shall be publicly released unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determine that public release is appropriate. Only the members of the Hearing Body, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a Notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Regional Entities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "RFC", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees *ReliabilityFirst*, including without limitation its members, Board, compliance committee, any other committees or subcommittees, Staff, contracted employees, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This "hold harmless" clause does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

## Hearing Procedure

### 1.3 Initiation of the Hearing Process

#### 1.3.1 Registered Entity's Option to Request a Hearing

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these procedures, a Registered Entity may file a statement with ReliabilityFirst requesting a hearing if either:

- a) The Registered Entity files a Response to a Notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or
- b) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity's proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity's initial proposed Mitigation Plan.

A Registered Entity must file its hearing request within forty (40) days after (i) the Registered Entity files its Response to the Notice of Alleged Violation; or (ii) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity's proposed Mitigation Plan, whichever is applicable. If the Registered Entity does not file a hearing request within the time period set forth in this Paragraph, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the alleged violation or the Compliance Staff's rejection of the revised Mitigation Plan, whichever is applicable.

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity's proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity (or any Respondent if there are more than one Respondent) requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or any other Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

A Registered Entity shall attach to a request for hearing whichever of the following are applicable:

- a) The Registered Entity's self-report of a violation;



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- b) The Notice of Alleged Violation and the Registered Entity's Response thereto; and/or
- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejected the proposed revised Mitigation Plan.

### 1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) days after the date on which the Notice of Hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the Prehearing Conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) days after the date on which the Notice of Hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days of the Prehearing Conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all documents that Staff seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:
  - 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;

## Hearing Procedure

- 2) all documents that the Registered Entity seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
  - f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days of the Staff's reply comments filing pursuant to Subparagraph (e).
  - g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days of the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "Brief on Exceptions" in accordance with Paragraph 1.7.5. No replies to Briefs on Exceptions shall be allowed.
  - h) The Hearing Body shall strive, but is not required, to issue a Final Order within ninety (90) days of the Notice of Hearing.

The Hearing Officer or Hearing Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the Final Order within ninety (90) days of the Notice of Hearing.

### 1.4 General Hearing Procedure

#### 1.4.1 Notice of Hearing

Within seven (7) days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a Notice of Hearing in the docket. The Notice of Hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) days after the Notice of Hearing is issued.

#### 1.4.2 Hearing Officer

ReliabilityFirst may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Body as set forth in Paragraph 1.4.3. The Hearing Body reserves its right to attend any aspect of the hearing as a body or by individual members.

## Hearing Procedure

The Hearing Body may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for submission of the matter to the Hearing Body for final decision through the presentation to the Hearing Body of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, suspend or adjourn a hearing;
- 3) To separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) To modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise and issue orders concerning discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;
- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;
- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue initial opinions; and
- 11) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### 1.4.3 Hearing Body

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

- 1) The Hearing Body shall be entitled to receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses

## Hearing Procedure

thereto, and all written testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.

- 2) The Hearing Body or any individual member thereof shall be entitled, but not required, to attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The Hearing Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a Final Order.
- 4) The Hearing Body or any individual member thereof shall be entitled to offer upon its own motion information or documents, including books, papers, logs, graphs, maps, drawings, charts or any other written material, for submission into the evidentiary record at any time until the issuance of a Final Order; provided that the Participants shall be provided an opportunity to object to the motion seeking introduction of such information or documents into the evidentiary record, and to present testimony and other evidence in relation to such information or documents. The Hearing Body and individual members thereof shall strive to submit any such information or documents, upon motion, in a timely manner to avoid any undue delay in the hearing process. Participants shall file objections, if any, to a motion by the Hearing Body within 14 days after service of the motion. Participant objections shall clearly state the basis for the objection and may identify any evidence it seeks to introduce in response to the information or documents offered by the Hearing Body. If the Hearing Body denies the Participant's objections, or denies admission of any evidence submitted by the participant in relation to the information or documents introduced by the Hearing Body, the basis for the denial shall be explained in the Hearing Body's Final Order.
- 5) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it shall be entitled, on its own motion or upon petition for interlocutory review meeting the requirements of Paragraph 1.4.4, to reverse or modify the issuance or ruling in whole or in part, or to take any other action as may be appropriate.
- 6) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a Final Order. In issuing a Final Order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

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### 1.4.4 Interlocutory Review

A Participant shall be allowed to seek interlocutory review by the Hearing Body of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Body, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the Hearing Body within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Body.

On review of a Hearing Officer's ruling, the Hearing Body may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Body may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) ~~of the~~ of the Hearing Body and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Body's action taken on interlocutory review shall not be allowed. Only in exceptional circumstances shall an interlocutory review of a ruling of the Hearing Officer suspend a hearing.

A non-Participant that has been ordered by the Hearing Officer pursuant to paragraph 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Body of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to paragraph 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide document, information or testimony.

### 1.4.5 Disqualification

## Hearing Procedure

A Hearing Officer, Technical Advisor or member of the Hearing Body shall recuse himself or herself from a proceeding if participation would violate ReliabilityFirst's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Body from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the ReliabilityFirst Compliance Committee shall appoint a new member(s) from among the ReliabilityFirst Board of Directors to the Hearing Body to create a quorum, which new member(s) shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter. The ReliabilityFirst Compliance Committee shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Body shall be subject to the provisions applicable herein to all Hearing Body members.

### 1.4.6 Technical Advisor

The Hearing Officer and/or the Hearing Body may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

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

### 1.4.7 No Ex Parte Communications

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- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the Hearing Body, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; but
  - 2) the Hearing Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
    - A) in writing if the writing is simultaneously provided to all Participants; or
    - B) orally if a representative for every Participant is present in person or by telephone;
    - C) subject to the requirement that the substance of ruling on such issue be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling have the opportunity to state its objection on the record.
- b) This proscription does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof, provided that any member of the Compliance Staff involved in such communication may not be and may not subsequently serve as a Technical Advisor.
- c) This proscription also does not prohibit communications between members of the Hearing Body, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Body, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a Notice of Ex Parte Communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

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### 1.4.8 Appearances

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

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

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

### 1.4.9 Failure to Appear or Exercise Diligence

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such defaulting Participant. Any hearing costs incurred as a failure to appear may be assessed against such Participant.

Participants shall exercise diligence and timeliness in all actions before the Hearing Officer and the Hearing Body and in all other actions related to these Hearing Procedures. The failure of any Participant to exercise diligence or timeliness in any such actions, as determined by the Hearing Officer or Hearing Body, will be noted in the record and the Hearing Officer or Hearing Body may take such action as to promote the accomplishment of the goals of these Procedures outlined in Paragraph 1.1.3.

### 1.4.10 Consolidation of Proceedings

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



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

### 1.5 Prehearing Procedure

#### 1.5.1 ~~Waiver of Time Limits~~[Intentionally left blank]

~~[Intentionally left blank]~~

#### 1.5.2 Prehearing Conference

The purpose of the prehearing conference shall be to:

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

#### 1.5.3 Summary Disposition

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

#### 1.5.4 Status Hearings

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

### 1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate, including suspension of the procedural schedule to pursue settlement negotiations as set forth in ReliabilityFirst's Settlement Procedures, which are publicly available on the ReliabilityFirst website at [www.rfirst.org](http://www.rfirst.org). Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay a hearing proceeding. When the Hearing Officer grants a motion to dismiss a proceeding in whole or in part, the ruling shall set forth the rationale for the grant and shall be considered an initial opinion.

### 1.5.6 Experts

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that [unauthorized public](#) disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

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

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

(1) ~~Unless otherwise provided by order of the Hearing Officer or Hearing Body,~~ Within five (5) days of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:

(A) requests for information to the Respondent;

(B) every written request, including e-mail, directed to persons not employed by ~~ReliabilityFirst~~ [by ReliabilityFirst](#) to provide documents or to be interviewed;

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(C) the documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;

(E) all other documents obtained from the Respondent; and

(F) all other documents obtained from persons not employed by ReliabilityFirst.

The sole basis pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the basis set forth in Paragraph 1.5.7(b); provided however, that the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Body shall oversee the Staff's designation of documents to be produced to each Participant and the development, execution and enforcement of any protective order deemed necessary.

(3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such documents are material and relevant to the proceeding, the additional documents shall be made available to the Respondent not later than fourteen (14) days after Staff receives such documents. If the hearing is scheduled to begin, Staff shall make the additional documents available to the Respondent not less than ten (10) days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after such hearing begins, Staff shall make the additional documents available immediately to the Respondent.

(4) Nothing in subparagraph (a)(1) shall limit the discretion of ReliabilityFirst to make available any other document or the authority of the Hearing Officer to order the production of any other document.

### b) Documents That May Be Withheld

(1) Staff may withhold a document if:

(A) the document is privileged or constitutes attorney work product (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by Respondent).

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(B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of ReliabilityFirst, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, ReliabilityFirst, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

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

(2) Nothing in Subparagraph (b)(1)(B),(C) or (D) authorizes Staff to withhold a document, or a part thereof, that contains exculpatory evidence. Nothing in Subparagraph(b)(1) requires Staff to withhold a document from disclosure.

### c) **Withheld Document List**

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). ~~A list of withheld documents shall also be provided by any other Participant required to produce documents, at the time the documents are required to be produced.~~ Upon review, the Hearing Officer may order Staff to make ~~the list or~~ any document withheld available to the Respondent(s) for inspection and copying.

### d) **Timing of Inspection and Copying**

Except as set forth in this Paragraph, the Hearing Officer shall determine the schedule of production of documents pursuant to this hearing procedure provided that the Hearing Officer may modify any time period for production set forth in this Paragraph as warranted by the circumstances.

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

Documents subject to inspection and copying pursuant to this Paragraph shall be made available to the Respondent for inspection and copying at the

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ReliabilityFirst office where the documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A Respondent shall be given access to the documents at the ReliabilityFirst's offices during normal business hours. A Respondent shall not be given custody of the documents or be permitted to remove the documents from the ReliabilityFirst's offices.

(f) **Copying Costs**

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

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

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

### 1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through ~~408-409~~ of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.40~~98~~, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, ~~and~~ requests for admissions, ~~and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing.~~ Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through ~~408 and~~ 410 ~~and~~ 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through ~~385.408 and~~ 385.410 ~~and~~ 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

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- (a) The provisions of Subparagraphs ~~(b) through (g)~~(d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §384.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the Hearing Body ~~do not~~ have the authority to issue ~~subpoenas to, or otherwise~~ orders ~~to or~~ compel the appearance by or production of documents or information by, ~~any only a Pperson or entity~~ that (i) is not a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Body do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony.
- (d) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony.
- (e) References to the “Commission” in Rules 402 through ~~408 and~~410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), ~~and~~ the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the “Hearing Body”, ~~and~~ (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference to Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Body.
- (f) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, ~~or~~ request for admissions, or order to produce or provide specific documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
- (g) A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying.
- (h) In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was

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

- (i) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- (j) Notwithstanding (e) and (f), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant and material documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) ~~disallowing use~~ disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### 1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

Unless the Hearing Officer orders otherwise and with the exception (i) of any adverse Participant examination pursuant to Paragraph 1.6.16 and (ii) the testimony and documents of a non-Participant provided pursuant to an order to produce or provide documents, information or testimony, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and will be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce documents), the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing. This requirement does not preclude a Participant from using a document or other demonstrative evidence if grounds exist for such use in the conduct of proper cross-examination, even if the Participant did not file the document in advance of the evidentiary hearing.

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

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

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

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

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

### 1.5.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances from these proceedings, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. At any time during a proceeding, on the Hearing Officer's own motion or on the motion of any Participant or of any non-Participant ordered to produce documents, information or testimony, an order may be entered to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information, (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; or (vi) investigative files or documents that would disclose investigative techniques of Staff, ReliabilityFirst or any Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).



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- c) A ~~Participant submitting a~~ motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, information or studies, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
- e) The protective order shall identify the data, information or studies that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall close the hearing while the information is addressed to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

### 1.5.11 Pre-Evidentiary Hearing Memorandum

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

## 1.6 Evidentiary Hearing Procedure

### 1.6.1 Evidentiary Hearings

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

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### 1.6.2 Order of Receiving Evidence

In all proceedings, Compliance Staff shall open and close.

### 1.6.3 Opening and Closing Statements

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the Hearing Body. Any Participant's request for such statements, or Hearing Officer or Hearing Body notice requiring such statements, shall be made at least ten (10) days in advance of the evidentiary hearing.

### 1.6.4 Right of Participant to Present Evidence

A Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### 1.6.5 Exhibits

All material offered in evidence, ~~unless except oral testimony allowed by the Hearing Officer allows oral testimony or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony~~, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter, or other Hearing Officer designee, with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### 1.6.6 Witness Attendance at Evidentiary Hearing

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Body have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall file an affidavit of the witness attesting to the veracity of the witness' testimony and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### 1.6.7 Admission of Evidence

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise. All testimony is to be under oath or affirmation.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony that the witness would like to change or correct. Subject to

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objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Body, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is ReliabilityFirst's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken to provide the other Participants with a fair opportunity for response and cross-examination.

### 1.6.8 Evidence that is Part of a Book, Paper or Document

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a copy of such matter in proper form shall be offered as an Exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### 1.6.9 Stipulation

The Participants may stipulate to any relevant fact or the authenticity of any relevant document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### 1.6.10 Official Notice

The Hearing Officer may take official notice of any of the following:

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- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of regional reliability entities other than ReliabilityFirst.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed ReliabilityFirst proceedings.
- 3) State and Federal statutes and municipal and local ordinances.
- 4) The decisions of State and Federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of ReliabilityFirst.
- 6) All other matters of which the courts of the United States may take judicial notice.

An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit unless waived by the Participants and approved by the Hearing Officer. Any scientific or technical fact, or other information not in document form, of which notice is taken shall be set forth in a statement on the record. The Hearing Officer will afford any Participant making a timely request an opportunity to show the contrary to the matter officially noticed.

### 1.6.11 Admissibility of Evidence

Any evidence offered, including that which is included in a book, paper or document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

Generally recognized rules of evidence shall not apply. Rather, the Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. However, the Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### 1.6.12 Offer of Proof

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

### 1.6.13 Reservation of Evidentiary Ruling

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a

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full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

### **1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' cross-examination, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Body. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Body. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' redirect-examination. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to do so, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the evidentiary hearing. [Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.](#)

### **1.6.17 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

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- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, and the number and complexity of the issues.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### 1.7.2 Other Pleadings

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### 1.7.3 Draft Opinions

The Hearing Officer may permit or require Participants to file draft opinions that set forth the Participants' proposed findings of fact and conclusions of law.

### 1.7.4 Hearing Officer's Initial Opinion

Except as otherwise ordered by the Hearing Body, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Body's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty or Mitigation Plan that the Hearing Officer proposes the Hearing Body require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be Critical Energy Infrastructure Information protected pursuant to Paragraph 1.5.10.

### 1.7.5 Exceptions

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- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "Brief on Exceptions" and, within fourteen (14) days after the time for filing "Briefs on Exceptions" or such other time as is set by the Hearing Officer, any Participant may file as a reply, "Brief in Reply to Exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error of fact or law asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed:
  - 1) together in one brief; or
  - 2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### 1.7.6 Oral Argument

The Hearing Body may elect to hear oral argument. If oral argument is held without initial briefs, Participants will be given the opportunity to present argument on all issues. If oral argument is held in addition to initial briefs, argument may be limited to issues identified by the

## Hearing Procedure

Hearing Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than 48 hours prior to the time and date of oral argument.

### 1.7.7 Additional Hearings

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Body's own motion if there is reason to believe that reopening is warranted by any changes in conditions of fact or law, or by the public interest. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes of fact or of law, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### 1.7.8 Hearing Body Final Order

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its Final Order. Issuance of a Final Order shall require (i) a quorum of the Hearing Body, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Body shall strive, but shall not be required, to issue its Final Order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The Final Order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Final Order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. If the Final Order imposes a Penalty, it shall be entitled Final Order and Notice of Penalty. The Final Order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.10. The Hearing Body shall direct the Clerk to serve the Final Order on the Participants. The service of the Final Order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### 1.7.9 The Record

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:



## Hearing Procedure

- 1) Notice of Alleged Violation and Registered Entity's Response thereto;
- 2) Registered Entity's Proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- 3) Registered Entity's request for a hearing;
- 4) Participant filings, motions, and responses;
- 5) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- 6) Transcripts;
- 7) Evidence received;
- 8) Matters officially noticed;
- 9) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 10) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 11) Post-hearing pleadings other than briefs;
- 12) The Hearing Officer's initial opinion;
- 13) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 14) The Hearing Body's Final Order and any Notice of Penalty therewith;
- 15) All Notices of Ex Parte Communications;
- 16) Written comments submitted in lieu of written testimony;
- 17) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer of Technical Advisor and any responses or replies thereto; and
- 19) All Settlement Agreements and supporting Explanatory Statements, and Initial Opinions and Final Orders on Settlement Agreements.

### **1.7.10 Appeal**

A Final Order of the Hearing Body may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit the record of any docket to NERC that is the subject of an appealed Final Order.

## Hearing Procedure

### 1.8 Settlement

Settlements may be entered into at any time pursuant to ReliabilityFirst's Settlement Procedures, which are publicly available on the ReliabilityFirst web-site at [www.rfirst.org](http://www.rfirst.org)...

### 1.9 Remedial Action Directives

#### 1.9.1 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. ReliabilityFirst will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of ReliabilityFirst that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to ReliabilityFirst within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.9.2(a).

#### 1.9.2 Remedial Action Directive Hearing Procedure

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless a rule's context is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why

## Hearing Procedure

the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.

- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants shall not file any briefs or draft opinions, and oral argument shall not be held.
- f) The Hearing Body shall issue a summary written decision within ten (10) days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.

**DOCKET NOS. RR06-1-016/017 AND RR07-07-004/005**

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

**ATTACHMENT 6**

**REVISED AMENDED AND RESTATED DELEGATION AGREEMENT  
BETWEEN NERC AND  
WESTERN ELECTRICITY COORDINATING COUNCIL**

**ATTACHMENT 6A:  
CLEAN VERSION OF REVISED DELEGATION AGREEMENT**

**ATTACHMENT 6B:  
REDLINED VERSION OF REVISED WECC  
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM  
AND HEARING PROCEDURES**

**ATTACHMENT 6A:**

**CLEAN VERSION OF REVISED DELEGATION AGREEMENT**



**Louise McCarren**  
Chief Executive Officer

801.582.0353  
lmccarren@wecc.biz

February 13, 2009

Mr. David N. Cook  
Vice President, General Counsel, and Director of Regulatory Services  
North American Electric Reliability Corporation  
116-390 Village Boulevard  
Princeton, New Jersey 08540-5721

Dear Mr. Cook:

On January 30, 2009, the Western Electricity Coordinating Council's Board of Directors approved the modifications to Exhibit D of the Regional Delegation Agreement between WECC and the North American Electric Reliability Corporation negotiated by the parties. Consequently, WECC will be prepared to execute the revised delegation agreement following receipt of Commission approval.

Sincerely,

Louise McCarren

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND WESTERN ELECTRICITY COORDINATING COUNCIL**

DELEGATION AGREEMENT (“Agreement”) made as of \_\_\_\_\_, 2008, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Western Electricity Coordinating Council (WECC), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and WECC may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

**WHEREAS**, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

**WHEREAS**, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006; (114 FERC ¶ 61, 104; hereafter “Order 672”);

**WHEREAS**, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

**WHEREAS**, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

**WHEREAS**, the Act and Section 39.8 of the Commission’s regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as WECC provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

**WHEREAS**, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

**WHEREAS**, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

**WHEREAS**, WECC is organized on an Interconnection-wide basis and therefore is entitled to the rebuttable presumptions accorded such an entity;



**WHEREAS**, NERC will work through WECC to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

**WHEREAS**, NERC has concluded that WECC meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, NERC and WECC, agree as follows:

**1. Definitions.** The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to WECC to propose and enforce Reliability Standards pursuant to the Act.

(d) WECC Rules means the Bylaws, a rule of procedure or other organizational rule or protocol of WECC.

(e) NERC Rules means the NERC Rules of Procedure.

(f) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

## 2. Representations.

(a) For purposes of its Delegated Authority, WECC hereby represents and warrants to NERC that:

(i) WECC is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. WECC is governed in accordance with its Bylaws by a combination independent and balanced stakeholder board. Pursuant to these Bylaws, no two industry sectors can control any WECC decision and no single industry sector can veto any WECC decision. The WECC Bylaws are attached hereto as **Exhibit B** and as so attached are in full force and effect.

(ii) As set forth in **Exhibit C** hereto, WECC has developed a standards development procedure, which provides the process that WECC shall use to develop Regional Reliability Standards and that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto, WECC has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to WECC that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

(iii) Attached are copies of all documents incorporated by reference that are not included elsewhere in this Agreement.

## 3. Covenants.

(a) During the term of this Agreement, WECC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the WECC Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the

case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of WECC under this Agreement without first obtaining the consent of WECC, which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and WECC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

#### **4. Delegation of Authority.**

(a) Based upon the representations, warranties and covenants of WECC in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to WECC for the purpose of proposing to NERC and enforcing Reliability Standards within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) The authority delegated by this Agreement extends only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both WECC and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, WECC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

## 5. Reliability Standards.

- (a) In connection with its Delegated Authority, WECC shall be entitled to:
- (i) propose Reliability Standards or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords WECC reasonable notice and opportunity to be heard; and
  - (ii) develop Regional Reliability Standards through WECC's process as set forth in **Exhibit C**. Reliability Standards approved through WECC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. Comments shall be limited to the factors identified in Section 215(d)(3) of the Act. The NERC Board of Trustees shall promptly thereafter consider such proposed Regional Reliability Standard and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. WECC may appeal any disapproval of a proposed Regional Reliability Standard to the Commission.
- (b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from WECC for a Regional Reliability Standard or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the WECC shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the WECC during NERC's review of the proposal.

## 6. Enforcement.

- (a) In connection with its delegated authority pursuant to this Agreement, WECC shall enforce Reliability Standards (including Regional Reliability Standards) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and WECC agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. WECC may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be

unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, WECC agrees to comply with the NERC Rules in implementing this program.

(b) Where WECC performs functions not under this Agreement, the WECC shall maintain a segregation of responsibilities to ensure that no conflicts of interest that would cast doubt on the ability of WECC staff and any contractor of the WECC to act with total objectivity with regard to the overall interests of the compliance program and its applicability to those entities subject to Reliability Standards.

(c) As often as NERC deems necessary, but no less than every three years, NERC shall review WECC's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of bulk power system.

(d) WECC shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Section 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(c) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(e) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

**7. Delegation-Related Services.** NERC will engage WECC on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

**8. Funding.** WECC and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund WECC activities necessary for WECC to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon WECC without providing appropriate funding to carry out such mandates;

(b) WECC and NERC agree that costs of carrying out WECC's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such formula as is proposed by WECC and approved by NERC and the Commission. If WECC proposes to use a formula other than net energy for load beginning in the following year, WECC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and WECC to the Commission pursuant to 18 C.F.R. §39.4 for such year.

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide WECC with the form for budget submittal no later than April 30 of the prior year.

(e) WECC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(f) WECC shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(g) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of WECC in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(h) **Exhibit E** to this Agreement sets forth the mechanism through which WECC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement and the mechanism by which WECC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of WECC..

**9. Assignment.** This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, and shall be subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. WECC may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit WECC from contracting with other entities to assist it in carrying out its Delegated Authority, provided WECC retains control and responsibility for such Delegated Authority.

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein,

the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years from the original effective date of May 2, 2007, prior to which time NERC shall conduct an audit to ensure that WECC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If WECC meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of WECC's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time WECC may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by WECC and NERC.



(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

**12. Limitation of Liability.** WECC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and WECC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the WECC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the WECC or NERC is found liable for gross negligence or intentional misconduct, in which case WECC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

**13. No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order

or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or that issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

**15. Amendment.** Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

**16. Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of WECC under this Agreement without first obtaining the consent of WECC, which consent shall not be unreasonably withheld or delayed. To the extent WECC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of WECC under this Agreement, WECC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by WECC to NERC and the Commission, or at such other time as may be mutually agreed by WECC and NERC.

**17. Dispute Resolution.** In the event a dispute arises under this Agreement between NERC and WECC, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the

designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

**18. Notice.** Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:  
North American Electric  
Reliability Corporation  
116-390 Village Blvd.  
Princeton, NJ 08540-5721  
Attn: David Nevius  
Facsimile: (609) 452-9550

If to WECC:  
Western Electricity Coordinating Council  
615 Arapeen Drive, Suite 210  
Salt Lake City, Utah 84108-1262  
Attn: Louise McCarren  
Facsimile: (801) 582-3918

**19. Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

**20. Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. **Savings Clause.** Nothing in this Agreement shall be construed to preempt or limit any authority that WECC may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. **Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. **Execution of Counterparts.** This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

**NOW THEREFORE**, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

WESTERN ELECTRICITY  
COORDINATING COUNCIL

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: David A. Whitely  
Title: Executive Vice President  
Date: \_\_\_\_\_

Name: V. Louise McCarren  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

# **EXHIBIT A**

WECC's physical boundaries coincide with the boundaries of the Western Interconnection. The Western Interconnection consists of the synchronously operated electric transmission grid in the western part of North America, which includes parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming, and Mexico and all of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, Washington and the Canadian Provinces of British Columbia and Alberta. The WECC region encompasses approximately 1.8 million square miles.

WECC's northern border runs along the northern border of British Columbia and Alberta. The western border extends along the western coast of North America from British Columbia into northern Baja California, Mexico. The southern border traverses northern Baja and extends along the southern United States border to Texas. The eastern border bisects North America from Alberta, Canada through the states of Montana, South Dakota, Wyoming, Nebraska, Texas and New Mexico to the southern United States border.

# **EXHIBIT B**

## Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

**CRITERION 1:** The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

**CRITERION 2:** The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

**CRITERION 3:** If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

**CRITERION 4:** The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

**CRITERION 5:** The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)



**BYLAWS**  
**OF**  
**THE**  
**WESTERN ELECTRICITY COORDINATING COUNCIL**

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**BYLAWS**  
**Of**  
**The**  
**WESTERN ELECTRICITY COORDINATING COUNCIL**

**1. Mission.**

The Western Interconnection is the geographic area containing the synchronously operated electric grid in the western part of North America, which includes parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming, and Mexico and all of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, Washington and the Canadian provinces of British Columbia and Alberta.

The Western Electricity Coordinating Council (“WECC”) is a Utah nonprofit corporation with the mission to do the following consistent with these Bylaws: 1) maintain a reliable electric power system in the Western Interconnection that supports efficient competitive power markets (“Reliability Mission”); and 2) assure open and non-discriminatory transmission access among Members and provide a forum for resolving transmission access disputes between Members consistent with FERC policies where alternative forums are unavailable or where the Members agree to resolve a dispute using the mechanism provided in Section 11 (“Transmission Access Mission”).

**2. Furtherance of the WECC’s Mission**

**2.1 Activities to Carry Out WECC’s Reliability Mission.**

- 2.1.1 Compliance with the Federal Power Act. The WECC will carry out responsibilities and exercise rights of a Regional Entity organized on an interconnection-wide basis pursuant to Section 215 of the Federal Power Act, including any responsibilities and rights delegated to it by the ERO pursuant to a Delegation Agreement.
- 2.1.2 Agreements with Canada and Mexico. The WECC will carry out responsibilities and exercise rights pursuant to International Reliability Agreements with Canadian or Mexican authorities.
- 2.1.3 Regional Coordination. The WECC will act as a coordinating entity for the entire Western Interconnection for activities of regional organizations with responsibilities for reliability and market functions.
- 2.1.4 Standard Setting. The WECC will develop and adopt reliability, operating, and planning standards, criteria and guidelines necessary to maintain the reliable operation of the Western Interconnection’s interconnected bulk power system, including seeking, as appropriate, variances from standards of the ERO (or any

successor organization which may be created by legislation or otherwise), as well as providing a process for regional variances.

- 2.1.5 Certification of Grid Operating Entities. The WECC will certify Grid Operating Entities in the Western Interconnection.
- 2.1.6 Reliability Assessment. The WECC will ensure that interconnected bulk electric system reliability assessments are conducted as needed. The WECC will do this work in conjunction with the Regional Entities to the greatest extent possible. The WECC will also facilitate coordinated reliability assessments among Regional Entities.
- 2.1.7 Compliance Activities. With respect to enforcement of reliability standards, the WECC will:
  - 2.1.7.1 implement the Reliability Management System in effect as of the WECC's formation and as the Reliability Management System may be subsequently modified in accordance with its terms;
  - 2.1.7.2 implement any enforcement mechanisms delegated to it pursuant to Section 215 of the Federal Power Act and any Delegation Agreement with the ERO, or required by any International Reliability Agreement with a Canadian or Mexican authority; and
  - 2.1.7.3 administer any other enforcement mechanisms developed through voluntary processes after the WECC's formation, where the WECC is designated to perform administration.
- 2.1.8 Coordinated Regional Planning. With respect to the coordination of regional planning activities, the WECC:
  - 2.1.8.1 will develop coordinated planning policies and procedures for the Western Interconnection, including facilitation of market-based solutions, consistent with WECC/ERO standards and FERC policy.
  - 2.1.8.2 will review and assess Local Regional Entity planning processes to determine whether WECC planning procedures have been satisfied;
  - 2.1.8.3 will refer planning matters back to the originating Local Regional Entity for revision or other corrective actions when the WECC Board determines that WECC planning procedures have not been satisfied; and
  - 2.1.8.4 may perform other interconnection-wide studies as needed.
- 2.1.9 Coordinated Operations. With respect to coordinating reliable operating activities within the Western Interconnection, the WECC will develop, coordinate and promote



consistent interregional operating policies and procedures for the Western Interconnection, consistent with WECC/ERO standards and FERC policy.

2.1.10 Market Interface Issues. With respect to Market Interface issues the WECC will:

2.1.10.1 facilitate development of compatible and efficient practices across the Western Interconnection; and

2.1.10.2 exercise Backstop Authority where an unresolved Market Interface issue will cause Material External Impacts by taking some or all of the following actions: 1) providing a forum for and coordinating voluntary solutions among Members; 2) recommending specific solutions for voluntary adoption by Members; and 3) if necessary, proposing solutions to an Applicable Regulatory Authority.

2.1.11 Dispute Resolution. The WECC will provide a process for the timely resolution of disputes between WECC Members as set forth in Section 11.

## **2.2 Activities to Carry Out WECC's Non-Discriminatory Access Mission.**

2.2.1 In accordance with Section 10 of these Bylaws, the WECC will ensure the provision of non-discriminatory transmission access between Members.

2.2.2 In accordance with Section 10 of these Bylaws, the WECC will provide for the submission of Open Access Transmission Tariffs (or petitions for exemption) by all Members that own or operate Transmission Facilities.

## **2.3 Organizational Characteristics.**

As the WECC carries out activities to fulfill its mission, it will seek to develop and maintain the following characteristics:

2.3.1 dedication to serving the individuals, businesses, and other organizations that generate, transmit, distribute, market, and use electrical energy in the Western Interconnection;

2.3.2 efficiency in its administration, decision-making, policy and standards development, and dispute resolution processes;

2.3.3 the ability to maintain status as an Interconnection-wide regional reliability entity and be afforded deference and delegation by ERO (or successor organization); and

2.3.4 fair and open processes through which practices, policies, and standards are developed and implemented based on sound technical and policy analysis.

2.3.5 Promote an efficient western electric market by reducing or eliminating conflict, duplication and overlap among electric organizations in the Western Interconnection.

### **3. Definitions.**

#### **3.1 Affiliate.**

An Entity that directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another Entity. An Entity “controls” any Entity in which it has the power to vote, directly or indirectly, 5% or more of the voting interests in such entity or, in the case of a partnership, if it is a general partner. Notwithstanding the foregoing definition, for purposes of these Bylaws: 1) electric distribution cooperatives that are member-owners of a generation and transmission cooperative are not Affiliates of the generation and transmission cooperative or of each other; 2) an entity controlled by or operating as a unit, agency, or subdivision of a local, state, provincial, or U.S. federal or Canadian or Mexican national government will not be considered an Affiliate of any other entity controlled by or operating as a unit, agency, or subdivision of a local, state, provincial, or federal government; 3) separate agencies of a single state or province, or of the U.S. federal or Canadian or Mexican national government will not be considered Affiliates of each other, regardless of any commonality of political control; 4) members of any joint powers authority, and such joint powers authority, will not be considered Affiliates of each other; and 5) members of an RTO will not be considered Affiliates of such RTO or of each other solely as a result of such membership.

#### **3.2 Annual Meeting.**

The annual membership meeting of WECC, as described in Section 5.3.

#### **3.3 Applicable Regulatory Authority.**

The FERC or any state or provincial government agency with jurisdiction to regulate or directly affect the transmission of electricity within the Western Interconnection.

#### **3.4 Backstop Authority.**

The ability, obligation, or responsibility of the WECC to address an issue when the WECC Board determines that a Local Regional Entity(ies) holding Primary Authority has not resolved an issue, has created incompatible resolutions or has not acted. In each case where these Bylaws authorize the WECC to exercise Backstop Authority, the provisions that authorize Backstop Authority will also specify the conditions necessary to trigger Backstop Authority and the actions that fall within the WECC’s exercise of Backstop Authority.

#### **3.5 Board of Directors (Board).**

WECC Board of Directors, collectively, as described in Section 6.

#### **3.6 Canadian Delegation.**

Canadian WECC Members.

- 3.7 Canadian Director.**  
A member of the WECC Board of Directors that is either a representative from a Canadian Member of WECC or an individual currently residing in Canada and qualified to provide expertise on Canadian interests on the WECC Board of Directors.
- 3.8 Class.**  
A grouping of Members described in Sections 4.2.1 through 4.2.7 and 4.3.
- 3.9 Commercial Practices.**  
The products and practices involved in trading electricity. The term “Commercial Practices” only refers to an interaction among market entities that does not affect or require assistance from Grid Operating Entities that have grid reliability responsibilities.
- 3.10 Compliance Hearing Body.**  
The hearing body formed in accordance with procedures established in the WECC Delegation Agreement with the ERO for the purpose of providing a balanced compliance panel to conduct hearings for the resolution of disputes concerning compliance with or enforcement of Reliability Standards that may arise between WECC (acting as Compliance Enforcement Authority for the Western Interconnection) and a Registered Entity.
- 3.11 Control Area.**  
An electric power system (or combination of electric power systems) to which a common automatic generation control scheme is applied in order to: 1) match, at all times, the power output of the generating units within the electric power system(s), plus the energy purchased from entities outside the electric system(s), minus energy sold to entities outside the electric system(s), with the demand within the electric power system(s); 2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; 3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and 4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.
- 3.12 Cross-Border Regional Entity.**  
A Regional Entity that encompasses a part of the United States and a part of Canada or Mexico, and may therefore be delegated authority to propose and enforce Reliability Standards in Canada or Mexico by virtue of applicable contractual or regulatory mechanisms.
- 3.13 Delegation Agreement.**  
An agreement between the ERO and the WECC pursuant to Section 215 of the Federal Power Act by which the ERO delegates to the WECC designated powers, rights and responsibilities regarding the administration within the Western Interconnection of electric Reliability Standards adopted or approved by the ERO and the FERC.
- 3.14 Director.**  
An individual member of the WECC’s Board of Directors.

- 3.15 Electric Line of Business.**  
The generation, transmission, distribution, or trading of electricity or the provision of related energy services in the Western Interconnection.
- 3.16 Electric Reliability Organization (ERO).**  
The organization certified by FERC under 18 C.F.R. §39.3, the purpose of which is to establish and enforce Reliability Standards for the bulk-power system in the United States, subject to FERC review.
- 3.17 Entity.**  
Any individual, person, corporation, partnership, association, governmental body or organization of any kind.
- 3.18 FERC.**  
The Federal Energy Regulatory Commission or any successor.
- 3.19 Good Utility Practice.**  
Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 3.20 Grid Operating Entity.**  
Any operating entity, such as a control area operator, that is certified pursuant to Section 2.1.5 of these Bylaws to be responsible for reliable operation of a portion of the Western Interconnection.
- 3.21 Participating Stakeholder.**  
Any person or entity that is not a WECC Member, but is an interested stakeholder and has applied and been granted, pursuant to Section 8.6.2, the participation and voting rights set forth in Section 8.6.1.
- 3.22 International Reliability Agreement.**  
An agreement between the WECC and any appropriate Canadian or Mexican authority related to WECC's powers, rights and responsibilities regarding the administration within the Western Interconnection of electric Reliability Standards.
- 3.23 Local Regional Entity.**  
A regional transmission organization or some other formally or informally constituted regional organization or group within the Western Interconnection, including but not limited to a Control Area, a group of Control Areas acting in concert, or a group of Entities that own or operate Transmission Facilities acting in concert. These Local

Regional Entity boundaries can be reevaluated or modified over time.

**3.24 Market Interface.**

Market Interface involves all interactions among market entities and Grid Operating Entities related to transmission service and physical delivery.

**3.25 Material External Impacts (MEI).**

Significant effects on another Local Regional Entity or market within the Western Interconnection but outside of the Local Regional Entity or market adopting a policy, standard, practice or procedure, or implementing an action.

**3.26 Member.**

Any entity that has applied and been accepted for membership in the WECC and is current in the payment of dues.

**3.27 Member Class Director.**

A Director elected by a Class in accordance with Section 6.4 of these Bylaws.

**3.28 Mexican Delegation.**

Mexican WECC Members.

**3.29 Mexican Director.**

A member of the WECC Board of Directors that is either a representative from a Mexican Member of WECC or an individual currently residing in Mexico and qualified to represent Mexican interests on the WECC Board of Directors.

**3.30 Non-Affiliated Director.**

A Director elected by the Members who satisfies the requirements of Section 6.5.1 of these Bylaws.

**3.31 Open Access Tariff.**

A tariff offering transmission service which meets the requirements applicable to FERC orders regarding open access.

**3.32 Organizing Meeting.**

The first formal membership meeting of the WECC.

**3.33 Primary Authority.**

The ability, obligation, or responsibility of an entity to address an issue in the first instance.

**3.34 Regional Entity (RE).**

An entity having enforcement authority pursuant to 18 C.F.R. §39.8.

- 3.35 Regional Transmission Organization (RTO).**  
An entity approved by the Federal Energy Regulatory Commission as meeting the requirements and performing the functions of a regional transmission organization pursuant to FERC Order 2000 and subsequent related orders.
- 3.36 Registered Entity.**  
An owner, operator, or user of the bulk-power system or the entities registered as their delegates for the purpose of compliance in the North American Electric Reliability Corporation Regional Compliance Registry.
- 3.37 Reliability Management System**  
The contracts, separate from these Bylaws, by which Members and other parties agree to certain procedures and sanctions intended to enforce specified Reliability Practices to maintain reliable electric service throughout the Western Interconnection.
- 3.38 Reliability Practices.**  
Policies, practices and standards designed to ensure the adequacy and security of the Western Interconnection in accordance with applicable reliability criteria (e.g. ERO, WECC, Local Regional Entity criteria).
- 3.39 Reliability Standard.**  
A requirement approved by FERC under section 215 of the Federal Power Act, to provide for reliable operation of the bulk-power system in the United States. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity. A Reliability Standard for the Western Interconnection may also be approved by Canadian and Mexican regulatory authorities.
- 3.40 Reliability Standards Development Procedures.**  
The Process for Developing and Approving WECC Standards (or its successor) attached as Exhibit C to the Delegation Agreement between WECC and North American Electric Reliability Corporation.
- 3.41 Transmission Facilities.**  
Those facilities that are defined as “transmission facilities” by FERC for purposes of the open access requirements of Section 210 and 211 of the Federal Power Act or any facilities which would be so defined if the Member were subject to FERC jurisdiction.
- 3.42 Western Interconnection.**  
The geographic area containing the synchronously operated electric transmission grid in the western part of North America, which includes parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming, and Mexico and all of Arizona, California, Colorado,

Idaho, Nevada, Oregon, Utah, Washington and the Canadian Provinces of British Columbia and Alberta.

#### **4. Members and Membership.**

##### **4.1 Voluntary Membership.**

Except as otherwise may be required by applicable authority, membership in the WECC is voluntary. A Member may withdraw upon giving the Secretary thirty (30) days' advance written notice. Notwithstanding such notice of withdrawal, all contracts (including any Reliability Management System Agreement), FERC orders, unpaid Member costs, decisions of arbitration and requests for transmission service made to the withdrawing Member in effect or pending as of the date of the written notice of withdrawal will be followed through to completion, pursuant to these Bylaws, by the withdrawing Member; however, pending requests for transmission service to be provided to such withdrawing Member will be void for the purposes of these Bylaws. Nothing herein will relieve any Member withdrawing from the WECC from any obligation it may have under applicable law including, but not limited to, Section 215 of the Federal Power Act. A Member that withdraws is obligated to pay any unpaid dues owed through the remainder of the fiscal year in which its resignation becomes effective. Any Director employed by a withdrawing Member will be deemed to have resigned pursuant to Section 6.8.

##### **4.2 Eligibility for Membership.**

Subject to Section 4.5, any Entity that is an interested stakeholder or that meets the criteria for membership in the membership classes described in Sections 4.2.1 through 4.2.7 may be a Member of the WECC:

- 4.2.1 Class 1. Electric Line of Business Entities owning, controlling or operating more than 1000 circuit miles of transmission lines of 115 kV and higher voltages within the Western Interconnection.
- 4.2.2 Class 2. Electric Line of Business Entities owning, controlling or operating transmission or distribution lines, but not more than 1,000 circuit miles of transmission lines of 115 kV or greater, within the Western Interconnection.
- 4.2.3 Class 3. Electric Line of Business Entities doing business in the Western Interconnection that do not own, control or operate transmission or distribution lines in the Western Interconnection, including power marketers, independent power producers, load serving entities and any other Entity whose primary business is the provision of energy services.
- 4.2.4 Class 4. End users of significant amounts of electricity in the Western Interconnection, including industrial, agricultural, commercial and retail entities as well as organizations in the Western Interconnection that represent the interests of a substantial number of end users or a substantial number of persons interested in the impacts of electric systems on the public or the environment.

- 4.2.5 Class 5. Representatives of states and provinces in the Western Interconnection, provided that such representatives will have policy or regulatory roles and do not represent state or provincial agencies and departments whose function involves significant direct participation in the market as end users or in Electric Line of Business activities.
- 4.2.6 Class 6. Canadian members of other classes pursuant to Section 4.3.
- 4.2.7 Class 7. Members at large, that is, entities that are not eligible for membership in the other Member Classes and who have a substantial interest in the purposes of the WECC.

### **4.3 Designation of Membership Class.**

A Member of WECC may not belong to more than one Class except that for purposes of electing Canadian Directors and for populating the Governance and Nominating Committee, there shall be a Class 6 composed of all Canadian Members from any of the Member Classes defined in Section 4.2 except Class 7. An applicant for membership will designate the Class for which it qualifies based upon the criteria for membership set forth in Section 4.2 and these additional requirements: 1) all Members that are Electric Line of Business Entities must belong to Classes 1, 2 or 3; and 2) any Member owning, controlling or operating Transmission Facilities or distribution facilities must belong to Class 1 or 2 unless the Board grants the Member's petition for a change in Member Class pursuant to the provisions of Section 4.4 of these Bylaws. Applications for membership will be submitted to the WECC. WECC staff will review the application to verify eligibility for membership and Member Class designation. An applicant whose application has been rejected or any Member who disputes the WECC staff's determination regarding the appropriate Member Class designation may request review by the Governance and Nominating Committee. If the applicant or any Member disagrees with the Governance and Nominating Committee's decision, the applicant or such Member may appeal this decision to the Board.

### **4.4 Changes in Membership Class.**

Notwithstanding any other provision of these Bylaws, upon a petition from a Member, the WECC staff (subject to review by the Governance and Nominating Committee and appeal to the Board) may allow the Member to change Member Class if the interest of the Member is more closely aligned with the proposed Class than the Member's current Class.

### **4.5 Affiliates and Distinct Business Entities.**

An Affiliate of a Member that satisfies the membership qualifications may also become a Member provided:

- 4.5.1 The Affiliate applying for membership and the Member disclose to the Chief Executive Officer all Affiliates that are WECC Members and the Classes to which the Affiliates belong. Every Member will promptly notify the Chief Executive Officer whenever it becomes, or ceases to be, an Affiliate of any other Member.



- 4.5.2 Affiliates may be members of the same Class; provided, however, a group of Affiliates within a single Class may only have one vote in any WECC forum. A group of Affiliates within a single Class may, by providing written notice to the Chief Executive Officer, split their single vote pro rata or designate a single Affiliate as the group's voting Member.
- 4.5.3 For good cause shown and with the express approval of the Board, a company or organization containing functionally distinct entities within it may obtain separate memberships for such entities; provided that such entities will be considered Affiliates.
- 4.5.4 The Board may adopt a policy regarding whether Members may share the benefits of membership (including the right to receive information that is only available to Members) with a non-member Affiliate.

#### **4.6 Rights and Obligations of Membership.**

Except as otherwise provided in these Bylaws or other applicable authority, Members of the WECC have the following general rights and obligations:

- 4.6.1 The right to elect and remove Directors as described in Sections 6.4, 6.5 and 6.7;
- 4.6.2 The right to amend these Bylaws, and to review and rescind any Board amendment of these Bylaws, in accordance with Section 13;
- 4.6.3 The right to receive appropriate meeting notices, as well as reports and information produced by the WECC;
- 4.6.4 The right to attend, participate and vote in all WECC Member meetings and the right to attend Board meetings (other than closed sessions of Board meetings) and to comment upon all matters considered in such meetings;
- 4.6.5 The right to be a member of, attend meetings of, and to introduce motions, debate and to vote in the deliberations of WECC committees, subject to the limitations of these Bylaws and such other reasonable limitations as the Board may adopt from time to time;
- 4.6.6 The right to obtain non-discriminatory transmission access from other Members in accordance with applicable law and Section 10 of these Bylaws;
- 4.6.7 The right to invoke the dispute resolution provisions of these Bylaws;
- 4.6.8 The right to petition the Board to take any action consistent with applicable law (including Section 215 of the Federal Power Act and implementing orders and regulations), these Bylaws and the articles of incorporation and to have such petition voted upon in a reasonable and timely manner;

- 4.6.9 The obligation to abide by these Bylaws, decisions resulting from the dispute resolution process, and all standards or decisions of the WECC, subject to the exceptions set forth in Section 4.7 and the enforcement provisions of Section 4.8.
- 4.6.10 For Members owning or operating Transmission Facilities, or possessing transmission capacity rights by contract, the obligation to provide non-discriminatory transmission access to other Members through a regional transmission organization, the submittal of an Open Access Tariff with the FERC or in accordance with Section 10 of these Bylaws;
- 4.6.11 The obligation to notify the Chief Executive Officer promptly of changes with respect to Affiliates as provided in Section 4.5.1 of these Bylaws; and
- 4.6.12 The obligation to pay in a timely manner the membership dues pursuant to Section 12.
- 4.6.13 The obligation to provide system data that the Board has determined is necessary for WECC functions and does not impose an undue burden on the Members; provided, however, that the Board shall adopt appropriate limitations on this obligation or procedures that protect, and avoid the unnecessary collection of, confidential, privileged, trade secret, cybersecurity or critical energy infrastructure information or other information that the Board determines merits such protection consistent with applicable law.

## 4.7

### **Limitations on Member Obligations.**

The obligation of Members pursuant to Section 4.6.9 will not require any Member to take any action which the Member in good faith determines: 1) would exceed the physical capabilities of the Member's electric system (or any part of another's electric system that the Member has the legal right to cause to comply with a WECC action governed by Section 4.6.9); 2) would create serious and immediate risks to public health or safety (provided, however, that the shedding of load shall not in and of itself be deemed a serious and immediate risk to public health and safety for the purpose of this section); 3) would create an immediate risk of serious damage to facilities or equipment within its electric system or cause it to operate any of its electric facilities or equipment in an unsafe manner; 4) would cause the Member to violate or improperly implement an applicable law, regulation, rule, order, FERC license provision or other legal obligation; or 5) would conflict with any non-power requirement applicable to the Member (including without limitation any obligation under environmental laws, regulations, court and administrative decisions or biological opinions).

Each Member shall retain sole control of its facilities and the use thereof, and a Member shall not be required to construct or dedicate facilities for the benefit of any other Member, or be required to take action, or refrain from action, as may be deemed necessary to maintain reliable service to its own customers and/or to fulfill its obligations to third parties; provided, that a Member shall comply with duly-adopted reliability standards applicable to its system and shall comply with any directives under existing security coordination agreements.

Nothing in these Bylaws is intended to preclude application of Section 210 or 211 of the Federal Power Act and Section 10 of these Bylaws. The above limitations shall not be construed as altering a Member's obligation to comply with applicable Reliability Standards or enforcement orders, or any other obligation arising under 18 C.F.R. Part 39.

#### **4.8 Compliance and Enforcement.**

The power of the WECC to enforce Member obligations other than compliance with Reliability Standards and other obligations arising under 18 C.F.R. Part 39 and applicable Canadian and Mexican regulatory requirements is limited to suspension or termination of membership as set forth in this Section; provided, however, that: 1) nothing in this Section will limit the power of Members to agree to additional enforcement provisions in separate contracts (such as contracts pursuant to the Reliability Management System); 2) nothing in this Section will limit the power of the WECC to propose solutions regarding Market Interface issues to any Applicable Regulatory Authority as described in Section 2.1.10; and 3) nothing in this Section will limit WECC's delegated authority under Section 215 of the Federal Power Act and 18 C.F.R. Part 39 and applicable Canadian and Mexican regulatory requirements to enforce Reliability Standards and perform other delegated functions within the Western Interconnection. The Board may suspend or, to the extent consistent with applicable law, terminate the membership of any Member for a material failure to meet any obligation of membership set forth in these Bylaws, including, but not limited to: 1) non-payment of dues sixty (60) days after the dues become delinquent; 2) intentionally or repeatedly violating any WECC Bylaw; 3) materially breaching or intentionally violating any FERC order or arbitration decision issued pursuant to these Bylaws; or 4) willfully obstructing any lawful purpose or activity of the WECC. The Board will give the affected Member not less than twenty-one (21) days prior written notice of any proposed suspension or termination, which will include the specific basis for the proposed action and, if applicable, instructions on curing the problem.

4.8.1 Suspension. The suspension of a Member will not affect the Member's rights and obligations other than that the Member, and any Director employed by or affiliated with the Member, will not be entitled to vote at any meeting of the Members, Classes, Directors, or any committee until the suspension is removed except that a suspended Member may vote in WECC committee and subcommittee meetings on proposed Reliability Standards or revisions to Reliability Standards.

4.8.2 Termination. The termination of membership will have the same effect, and be subject to the same continuing obligations, as such Member's withdrawal pursuant to Section 4.1 (including the provision therein regarding resignation of any Director employed by such Member), except that it will be effective immediately upon the noticed date pursuant to Section 4.8.

#### **4.9 WECC Structure and Governance Review Related to Regional Transmission Organizations.**

At least each five years, the Board of Directors will conduct a thorough assessment of whether the WECC is fulfilling its purposes in a manner that is consistent with: 1) the provisions of Section 2.3 of these Bylaws; and 2) the then-current state and the expected future evolution of the electric power industry within the Western Interconnection. In

particular, the Board will focus on whether the standards, obligations, processes, and decisions the WECC imposes on its Members are timely, fair, effective, and reasonable in view of the commercial, legal, regulatory, and economic needs and objectives of the affected Members. The Board will evaluate the WECC's Board composition, Member Class structure, committee structure and activities, and staff responsibilities as they relate to the foregoing considerations. The assessment required by this Section 4.9 will be accompanied by Board recommendations for any changes the Board determines are warranted by the assessment. The assessment and recommendations prepared by the Board in accordance with this Section 4.9 will be submitted in writing to the Members at the first annual Member meeting held after they are completed.

## **5. Procedures for Member Decisions.**

### **5.1 Quorum.**

Members may conduct business and take votes only at duly noticed Member meetings. Members may not conduct any business of the membership as a whole at any meeting unless a quorum is first established. A majority of all Members, including a majority in at least three (3) Classes, will constitute a quorum for all meetings of the membership as a whole. A majority of the members of a Class will constitute a quorum for all Member Class meetings. Inactive Members, as defined in Section 5.9 of these Bylaws, will not be counted in determining a quorum at membership or Member Class meetings. A quorum, once established, will be deemed to continue for the balance of any Member or Member Class meeting, except that no election of Directors may occur without a quorum being present. Members may designate an alternate representative or submit an absentee ballot in a form consistent with Section 6.6 for any Member or Member Class meeting. No Class may elect Member Class Directors without a majority of the members of the class being present either in person, or by designation of an alternate representative, or by the submission of an absentee vote. At a duly noticed meeting of the membership as a whole where a quorum of the membership has not been established, or at any duly noticed meeting of a Class meeting on its own, a Class may elect Member Class Directors notwithstanding the lack of quorum for action by the membership as a whole, provided a majority of the Members of a Class are present in person, or by designation of an alternate representative, or have submitted an absentee vote.

### **5.2 General Membership Meetings.**

All business of the Members acting as a whole will be conducted at meetings called by advance notice to all WECC Members provided in accordance with Section 5.5. Unless stated otherwise in these Bylaws, decisions at all meetings of the Members or of Member Classes will be by simple majority vote of the Members present or otherwise represented in accordance with these Bylaws, with each Member having one vote. The Chair of the Board will preside over all Member meetings.

### **5.3 Annual Member Meetings.**

The WECC will hold an Annual Meeting of all Members at a time and place determined by the Board. At the Annual Meeting, in addition to such other actions the Members may take, all Member Classes together will elect Non-Affiliated Directors and each Class eligible to do so will elect Member Class Directors.

**5.4 Special Member Meetings.**

Members may hold special meetings whenever called by the Board. The Board will call special Member meetings whenever a majority of the Members of any Class request a special meeting or at such other times as it deems appropriate. The Chair of the Board will preside over all special Member meetings.

**5.5 Member Class Meetings**

An individual WECC Member Class, including Class 6 consisting of the Canadian Delegation, may hold a meeting for any purpose relevant to the interests of Class Members, including the election of Member Class Directors by Classes eligible to do so. Such meeting will be initiated by request by one or more Class Member(s), and agreement by at least fifty percent (50%) of Class Members.

**5.6 Notice of Member Meetings.**

5.6.1 Annual Meeting. The Chief Executive Officer will provide at least thirty (30) days' advance notice to all Members and the Board of the date, place and time of the Annual Meeting of the Members and an agenda of the business to be conducted at such meeting.

5.6.2 Other Member Meetings. The Chief Executive Officer will provide notice of regularly scheduled and special meetings of the Members to the Members not less than fifteen (15) days before the meeting if delivered by first-class mail, or not less than ten (10) days before the meeting if the notice is delivered personally, by telephone, by facsimile, electronic mail or express mail. Notice of meetings may not be sent solely by electronic mail. If mailed, such notice will be deemed given when deposited in the United States mail, with first-class postage thereon prepaid, addressed to a Member. Such notice will state the date, time and place of the meeting and the meeting agenda.

5.6.3 Public and Web Site Notice. Public notice of each meeting of the Members will be placed on WECC's Web site at least ten (10) days before such meeting. In addition, the Chief Executive Officer will provide notice in the same manner and time as set forth in Section 5.6.2 of each meeting to each member of the public who so requests and who has provided appropriate information regarding delivery of notice.

**5.7 Open Meetings.**

All Membership meetings are open to observation by the public.

**5.8 Policymaking Authority.**

The Board of Directors may adopt policies for the interpretation and implementation of the meeting and voting procedures established in this Section 5.

**5.9 Minimum Participation Requirement.**

In order to be counted for quorum purposes at a meeting of the membership as a whole or Class meeting, a WECC Member must actively participate (by attending in person, sending

an alternate, or voting absentee) in at least one WECC meeting (including meetings of the Board, committees and subcommittees) each year. At least two weeks prior to the WECC Annual Meeting, WECC staff will send a notice to any Member that has, according to organizational records, not satisfied this minimum participation requirement within the previous year. The notice will inform the Member that in order to be counted as an active Member of WECC for voting and quorum purposes, the Member must at a minimum either register for an attend the Annual Meeting and associated Class meetings or participate in the Annual Meeting and associated Class meetings by casting an absentee ballot. If the Member does not meet this minimum participate requirement, the Member will be considered an “inactive” Member until its active status is restored by participation in a WECC Annual Meeting. An inactive Member will not be counted toward establishing a quorum of the membership as a whole or of a Class, and an inactive Member will not be entitled to vote at WECC meetings until the Member is reinstated to “active” status by attending in person, sending an alternate or voting absentee at an Annual Meeting and associated Class meetings. An applicant for WECC membership or a WECC Member may at any time self-designate itself an inactive Member. Such designation will be effective until the Member is reinstated to “active” status.

## **6. Governance.**

### **6.1 Board of Directors.**

Subject to those matters expressly requiring approval of the Membership, a Board of Directors elected by the Members will govern the WECC.

### **6.2 Composition of the Board.**

Except as provided in Sections 6.2.1 and 6.2.2, the Board consists of thirty-two Directors as follows: 1) twenty-four (24) Member Class Directors elected by the Member Classes eligible to do so, including Class 6 as defined in Section 6.2.1, (four from Classes 1 through 6); 2) seven (7) Non-Affiliated Directors elected by the WECC Members as a whole (which may include the Chief Executive Officer), and 3) one Mexican Director elected according to Section 6.2.2. As indicated in Section 6.2.1, if there is no Non-affiliated Director whose background and experience would provide the Board expertise on Canadian interests, then the Board size would be increased by one more Director elected by Class 6.

6.2.1 Canadian Interests. For purposes of providing fair and adequate representation of Canadian Interests in numbers that are approximately proportionate to the contribution of net energy for load in that portion of the Western Interconnection located in Canada, the Canadian Delegation shall constitute Class 6 and shall elect four (4) Canadian Directors, provided that at least one of these Canadian Directors must be affiliated with each of Member Classes 1, 3, and 5. Members of the Canadian Delegation shall vote for Directors in this Class 6 and shall not vote in other Member Class elections. In the initial election of these four Class 6 Directors, one shall have a term of four years, one shall have a term of three years, one shall have a term of two years, and one shall have a term of one year. Thereafter all Canadian Directors will serve a term of three years. Class 6 will also elect a fifth Canadian Director if, following the election of Non-Affiliated Directors at the

Annual Meeting, there is no Non-Affiliated Director qualified by virtue of background and experience in Canadian industry or government to provide Board expertise on Canadian interests. This fifth Canadian Director shall serve until the earlier of: 1) the end of a three-year term (provided that this provision will remain in effect and may continue to cause the election of an additional Director); or 2) the election by the Members of a Non-Affiliated Director with the background and experience described in this Section.

6.2.2 Mexican Interests. Whenever there are at least two (2) Members whose head offices and principal place of business are in Mexico or there is one such Member that operates a portion of the Western Interconnection and has signed the Reliability Management System agreement or has agreed to abide by any successor standards compliance system and no person has been elected to the Board by the Classes or Members whose experience or affiliation reflects Mexican interests, the number of Class Member Directors will be expanded by one (1) and the additional Member Class Director will be elected by the Mexican Delegation. This Mexican Director will serve until the earlier of: 1) the end of a three-year term (provided that this provision will remain in effect and may continue to cause the election of an additional Director); or 2) the election by the Members or a Member Class of a person with the experience or affiliation described in this Section.

### **6.3 Term of Office.**

Each Director will hold office for three (3) years. For Directors elected at the Annual Membership Meeting, each three (3) year term shall commence upon the adjournment of the portion of the Annual Member Meeting provided for in Section 5.3, in which all Members are counted for purposes of determining a quorum. Similarly, the three year terms of outgoing Directors shall end upon the adjournment of that portion of the Annual Member Meeting in which all Members are counted for purposes of determining a quorum, whether that results in a longer or shorter term than exactly three years.

### **6.4 Selection and Compensation of Member Class Directors.**

6.4.1 Selection of Member Class Directors. With the exception of Class 7, each Member Class shall be eligible to elect Member Class Directors. Member Class Directors will be elected by Members of their respective Classes of Membership. Each Member Class eligible to elect Member Class Directors may develop its own list of Director candidates or it may ask the Governance and Nominating Committee to develop a list of candidates. If the Governance Nominating Committee is used, it will select at least two (2) candidates for each vacancy for Member Class Director. In addition, in identifying candidates for Member Class Director positions, the Governance and Nominating Committee will seek to produce a slate of candidates who, together with the Directors from all Member Classes standing for election and continuing in office, will reflect the diversity of regional interests and characteristics within the Western Interconnection. The proposed slate of candidates will be mailed to the Members of the Class at least sixty (60) days before each Member Class Meeting at which the elections are to be held. Additional candidates may be added to the slate upon the

submittal of a nomination to the Chief Executive Officer signed by three (3) Members of the Class, or ten percent (10%) of the total number of Members of the Class, whichever is greater. The Chief Executive Officer must receive such nominations at least thirty (30) days before the Member Class Meeting. All candidates identified by the Class (as provided above) or by the Governance and Nominating Committee will be submitted to the Class for election at the Member Class Meeting. Candidates will provide reasonable background information regarding their qualifications and a disclosure statement regarding any affiliations with Electric Line of Business Entities in the Western Interconnection to the Members before each election. The Director candidate(s) receiving the highest number of votes cast by Members of the Class will be elected to the position of Director.

6.4.2 Member Class Director Qualifications. Member Classes eligible to elect Member Class Directors may elect any person as a Member Class Director, provided that no Member or group of Affiliated Members may have more than one Director associated with them. Nothing in this Section regarding the election of Directors by Classes of Members is intended to limit, qualify or alter in any manner the fiduciary obligation of Directors to the WECC set forth in Section 6.10.1. A Member Class Director shall notify all Members of the Class from which the Director was elected of any significant change in employment or other significant change in circumstances relevant to the Director's qualifications. Such notice shall be provided in writing as soon as possible and not later than sixty (60) days following the change.

6.4.3 Minimum Number of Class Members. Each Class eligible to elect Member Class Directors must have at least four (4) Members to be qualified to nominate and elect representatives to the Board of Directors. If a Class eligible to elect Member Class Directors contains less than four (4) members, then the Director positions for that Class will remain vacant until the first Annual Meeting at which the Class has the minimum number of members, at which time two of the vacant positions will be filled by election to three year terms and two by election to two year terms. If a Class eligible to elect Member Class Directors falls below the minimum number of members after having elected Directors, such Directors will continue to serve out their terms. However, upon expiration of their terms, the Director positions will remain vacant until such time as the Class contains sufficient members.

6.4.4 Member Class Director Compensation. Member Class Directors will not be compensated for their service by the WECC. The WECC will reimburse Member Class Directors for reasonable and actual out-of-pocket expenses (such as travel and lodging) that are not subject to reimbursement from any Member or other source.

## **6.5 Selection and Compensation of Non-Affiliated Directors.**

6.5.1 Non-Affiliated Director Qualifications.



6.5.1.1 Non-Affiliation. The Non-Affiliated Directors of the Board may not be affiliated with any Entity that is a Member of the WECC or is eligible for membership in Classes 1 through 3 of the WECC, provided that status as a residential electricity customer will not disqualify a person from sitting as a Director. A candidate will not be qualified to serve as a Director if the candidate, or the spouse or a minor child of the candidate, derives any of his or her annual income from a Member of WECC, an Entity that is eligible for membership in Classes 1 through 3, or a bulk power user in the Western Interconnection. The WECC shall maintain a list of such Members and Entities which shall be updated periodically. Non-Affiliated Directors, candidates and others shall be entitled to rely upon the list to determine compliance with these requirements.

6.5.1.1.1 Notwithstanding the provisions of Section 6.5.1.1, a candidate for Non-Affiliated Director will not be disqualified for owning shares in a mutual fund that owns an interest in a Member or an Affiliate of a Member as long as the mutual fund does not specialize exclusively or predominantly in the energy sector. The disqualification standards described in Section 6.5.1.1 will not disqualify a candidate who is receiving payments from a pension plan of a Member or an Affiliate of a Member in a form other than securities of such Member or Affiliate and the pension plan payments bear no relationship to the economic performance of the Member or Affiliate.

6.5.1.1.2 The disqualification standards described in Section 6.5.1.1 will not apply to disqualify a candidate solely by virtue of an employment or contractual relationship with a state that has one or more agencies that are eligible to be Members of Class 5 of WECC, provided that:

1. In the case of a candidate's employment relationship, the employer is not a member of WECC;
2. In the case of a candidate's contractual relationship with a state agency, no member or employee of the state agency is a member of the WECC Board;
3. In the case of a candidate's employment relationship with a contractor to a state agency, no member or employee of the state agency is a member of the WECC Board; and
4. In the case of a candidate's employment or contractual relationship with a state agency which is a WECC Member or employs a WECC Board member, if the Governance and Nominating Committee determines that

the candidate's employment duties do not include significant work for or representation of that state agency.

6.5.1.1.3 Notwithstanding the provisions of this Section 6.5.1.1, a candidate for Non-Affiliated Director will not be disqualified for being affiliated with an organization that represents a substantial number of end users or a substantial number of persons interested in the impacts of electric systems on the public interest or the environment.

6.5.1.2 Expertise. The Governance and Nominating Committee will nominate Non-Affiliated Director candidates with the objective of having at least one Non-Affiliated Director with expertise in electric transmission operations and planning. The Governance and Nominating Committee will also have the objective of nominating persons with: 1) experience in corporate leadership at the senior management or board of directors level; 2) leadership experience in law, finance, economics, accounting, engineering, regulation, natural resources or commercial commodity markets and associated risk management; 3) experience representing a substantial number of end users or a substantial number of persons interested in the impacts of electric systems on the public or the environment; 4) a well-developed understanding of the distinct operational, resource, political, and interest-based characteristics of various regions within the Western Interconnection; and 5) a well-developed understanding of Canadian power systems or Canadian regulatory issues.

## 6.5.2 Selection of Non-Affiliated Directors.

6.5.2.1 Selection of Non-Affiliated Directors. After the initial election of Non-Affiliated Directors, the Governance and Nominating Committee will make nominations. Before the end of each Non-Affiliated Director's term, the Governance and Nominating Committee may select an independent search firm to provide the Governance and Nominating Committee with a list of qualified candidates for each vacant position. Incumbent Directors, if qualified and willing to serve, may be considered for nomination by the Governance and Nominating Committee. The Governance and Nominating Committee will consider each candidate for Non-Affiliated Director to determine whether that candidate is qualified to stand for election to the Board. From the list of candidates accepted by the Governance and Nominating Committee to stand for election, the Governance and Nominating Committee will select a slate of candidates for the vacant Non-Affiliated Director positions. The Governance and Nominating Committee's slate of candidates will be e-mailed to the Members no later than sixty (60) days prior to the Annual Meeting. Additional candidates may be added to the slate upon the submittal of a nomination to the Chief Executive Officer signed by three (3) Members of any Class, or ten percent

(10%) of the total number of Members of any Class, whichever is greater. The Chief Executive Officer must receive such nomination at least thirty (30) days before the Annual Meeting. The Chief Executive Officer will place such nominations before the Members for possible election unless he or she determines in writing that a proposed nominee does not meet the criteria for eligibility to be a Non-Affiliated Director in these Bylaws.

6.5.2.2 Disclosure Statement. Candidates for Non-Affiliated Director will provide to the Governance and Nominating Committee and, if nominated, to the Members, a statement describing their expertise and disclosing any present or past affiliations, relationships or associations relevant to their qualification to serve as a Non-Affiliated Director. A candidate for Non-Affiliated Director will be required to disclose any economic interest in any Member of the WECC or any Entity eligible for membership in Classes 1 through 3 of the WECC held by themselves, their spouse or their children as well as any such interest known to the candidate held by the candidate's parents, siblings, aunts, uncles, or first cousins.

6.5.2.3 Election. The number of Non-Affiliated Director candidate(s) corresponding to the number of vacant positions receiving the highest number of votes cast at the Annual Meetings of the Members will be elected to the position of Non-Affiliated Director.

6.5.3 Non-Affiliated Director Compensation. The Non-Affiliated Directors will receive a level of compensation as determined from time to time by the Member Class Directors.

## **6.6 Tie Vote.**

In the event of an inability to select Directors due to a tie vote, a second vote will be taken to determine the placement of the tied candidates. The second vote will be limited to the tied candidates, with the candidate(s) receiving the highest number of votes being selected. If another tie vote results, additional votes will be taken (after the elimination of any candidate receiving fewer votes than the tied candidates) until a candidate can be selected. If a tie cannot be resolved pursuant to the foregoing procedures, it will be resolved by lot. For the purpose of such second (and subsequent) votes, absentee ballots shall allow voters to list all candidates in order of preference such that absentee ballots may be counted by striking those candidates not participating in the run-off. Absentee ballots that express an order of preference for fewer than all candidates will be counted if the ballot demonstrates clear preference among the runoff candidates.

## **6.7 Removal of Directors.**

The Members or the Board may remove a Director before completion of the Director's term of office pursuant to the following provisions.

6.7.1 Removal by the Members. Member Class Directors may be removed at will by a vote of at least sixty percent (60%) of the Members of the Class that elected that Director. Non-Affiliated Directors may be removed only for gross negligence,

violation of local, state, provincial, or federal laws, gross misconduct, or failure to meet the fiduciary obligations of Directors. Removal of a Non-Affiliated Director will be by a vote of at least fifty percent (50%) of the entire WECC membership, including a vote of at least fifty percent (50%) of each Class.

6.7.2 Removal by the Board. The Board may remove any Director for gross negligence, violation of local, state, provincial, or federal laws, gross misconduct, or failure to meet the fiduciary obligations of Directors. Such removal will only occur upon the affirmative vote of not less than twenty-one (21) Directors.

## **6.8 Resignation.**

Any Director may resign from his or her office or position at any time by written notice to the Board by delivery to the Chair. Pursuant to Sections 4.1 and 4.8.2, a Director employed by a withdrawing or expelled Member will be deemed to have resigned. The acceptance of a resignation will not be required to make it effective.

## **6.9 Procedures for Filling Vacant Director Positions.**

6.9.1 Member Class Director Vacancies. If the position of any Director elected by a Member Class becomes vacant, the remaining Directors elected by the same Class will promptly choose a successor to that position who will serve until the next Annual Meeting.

6.9.2 Non-Affiliated Director Vacancies. If the position of any Non-Affiliated Director becomes vacant, the remaining Directors may charge the Governance and Nominating Committee with selecting a successor immediately. The Governance and Nominating Committee will follow the requirements set out in Section 6.5.2.1 in its selection of any successor Non-Affiliated Director. Alternatively, if less than one (1) year remains in the term of that Director, the remaining Directors may choose to leave the position vacant for the remainder of the term.

6.9.3 Holdover to Cure Procedural Vacancies. Whenever a vacancy in any Member Class or Non-Affiliated Director position would be created due to expiration of a Director's term combined with a lack of a quorum or other procedural inability to elect a new Director, the expired Director's term shall be extended until such time as a proper election of a new Director can be conducted.

## **6.10 Duties of Directors.**

The Directors will have the following duties:

6.10.1 Fiduciary Obligation to the WECC: All Directors, including Member Class Directors, will have a fiduciary obligation to the WECC consistent with the requirements for Directors of Utah non-profit corporations. Notwithstanding any affiliation with individual Members or Class of membership, Members of the Board will at all times act in conformance with such requirements, these Bylaws and the Standards of Conduct set forth in Appendix A.

6.10.2 Preserve Non-Affiliated Status: Throughout their terms, Non-Affiliated Directors will have a duty to avoid any affiliation that is inconsistent with the standards for Non-Affiliated Directors in Section 6.5.1.1 of these Bylaws. If a Non-Affiliated Director becomes aware of any such affiliation, he/she must either resign or eliminate the affiliation (e.g., dispose of securities) within six (6) months.

### **6.11 Powers of Directors.**

The management of all the property and affairs of the WECC will be vested in the Board of Directors. The Board will hold annual elections to select a Board Chair and to fill any other Board officer positions that may be created by the Board or required by applicable law. The Board may exercise all the powers of the WECC and do all lawful acts and things (including the adoption of such rules and regulations for the conduct of its meetings, the exercise of its powers and the management of the WECC) as are consistent with these Bylaws and the Articles of Incorporation.

### **6.12 Delegation of Board Authority.**

The Board may delegate to the Chief Executive Officer or to any Board Committee formed pursuant to Section 7.7 any or all of its powers and authority except: 1) any power which it may not delegate pursuant to applicable Utah law; 2) the power to adopt any reliability standard; 3) the power to determine when to exercise the Backstop Authority of the WECC; 4) the power to approve budgets; 5) the power to form committees; 6) the power to amend the Bylaws; 7) the power to elect the Chair and other officers of the Board; 8) the power to enter into contracts obligating the WECC to pay an amount exceeding \$50,000; and 9) the power to hire, fire or set the terms of employment of the Chief Executive Officer. The Board may also delegate to any Member committee the power to make specific decisions, subject to the right of any Member to appeal any of such decisions to the Board within 30 days of the committee vote on the decision by writing a letter to the Chief Executive Officer that describes in reasonable detail the grounds for appeal, and requests that the appeal be considered by the Board at its next regularly scheduled meeting, subject to applicable notice requirements. Delegation will be by express decision and will require the affirmative vote of not less than twenty (20) Directors. Any Director may call for a vote to rescind such delegation at any time and such delegation will be rescinded if eight (8) or more Directors vote to do so.

6.12.1 Notice to Members. Within seven (7) days of any decision delegated pursuant to Section 6.12, except for routine decisions of the Chief Executive Officer, Members will be notified of the decision by electronic mail, posting on the WECC Web site and any other means determined appropriate by the Board. Routine decisions of the Chief Executive Officer will be noticed in periodic reports to the Board and Members as determined by the Board, which will be sent to Members by electronic mail and posted on the WECC Web site.

6.12.2 Board Review of Delegated Decisions. Decisions delegated pursuant to Section 6.12 will be reviewed by the Board at the request of any Director, provided such request is lodged with the Secretary within thirty (30) days of the notice. Whenever it determines that a matter requires an urgent decision, the Board may shorten the

deadline for requests for review, provided that: 1) the notice and opportunity for review will be reasonable under the circumstances; and 2) notices to Members will always contain clear notification of the procedures and deadlines for Board review. A request for review of a decision will stay the effect of the decision pending review unless the Board in making the delegation expressly determines otherwise.

## **7. Procedures for Board Decisions.**

### **7.1 Quorum.**

No business will be conducted by the Board unless at least seventeen (17) Directors are present, including at least three (3) Non-Affiliated Directors and at least one Director elected by each of not less than four (4) of the Member Classes; provided, that if all Member Class Director positions for a Class are vacant, or if a Class is not entitled to elect Member Class Directors, then no Director elected by such Class will be required to be present for the Board to conduct business.

### **7.2 Majority Vote.**

A decision of the Board will require an affirmative vote of a majority of Directors present. Directors may not vote by proxy or by absentee ballot, but Directors may participate in Board meetings by telephone as provided in Section 7.3 of these Bylaws.

### **7.3 Attendance at Board Meetings by Teleconference.**

Any or all of the WECC's Directors may participate in any meeting of the Board by telephone conference or any other means of communication that enable all Directors participating in the meeting to simultaneously hear one another. Every Director participating in a meeting in the manner described in the preceding sentence will be deemed to be present in person at that meeting.

### **7.4 Board Action by Unanimous Consent.**

7.4.1 Action Without a Meeting. Unless the WECC's Articles of Incorporation or applicable law provides otherwise, action required or permitted to be taken at a meeting of the Board may be taken without a meeting through one or more written consents describing the action taken. Any Board action taken by written consent must be signed by all Directors in office at the time the action is taken. Such actions must be noticed to Members in accordance with Section 7.5 and Members must be given an opportunity to comment prior to the Board taking such actions through electronic mail, comments on the Web site or other appropriate means. The required notice of such meeting may generally describe the arrangements (rather than the place) for the holding of the meeting. All other provisions herein contained or referred to will apply to such meeting as though it were physically held at a single place. All Board actions by written consent must be filed with the WECC's Board meeting minutes. Action taken under this Section is effective when the last Director signs the consent, unless the consent specifies an earlier or later effective date. Any action by written consent has the same effect as a meeting vote and may be described as such in any document.

7.4.2 Waiver of Procedures. For any specific action at any noticed meeting of the Board, and under exigent or unusual circumstances, the Board by unanimous vote of those present may waive any procedural requirement applicable to Board decision-making, including any requirement for notice of a specific potential action, except for the following: 1) the requirement for notice of the time and place of the meeting pursuant to Section 7.5; 2) the quorum and voting requirements of Sections 7.1 and 7.2; and 3) any non-procedural limitation on the power of the Board to make a decision, including, but not limited to, those restrictions in Sections 6.12 (limiting the power to delegate) and 13.1 (limiting the power to amend the Bylaws). Whenever such action is taken, a statement describing the action, the exigent or unusual circumstances, the specific procedure waived, the basis for the waiver and the votes of all Directors present shall be posted on the web site and communicated in writing or by email to all Members within five (5) days.

## **7.5 Notice of Board Meetings.**

7.5.1 Regular Meetings. Except as set forth in Section 7.5.2 regarding urgent business, all regular business of the Board will occur at the Board meetings, at least twenty-one (21) days' advance notice of which has been provided by the Chief Executive Officer to all Directors and all Members. Notice will include an agenda that will identify those matters on which a vote will be taken at the meeting. The foregoing requirement shall not preclude the Board from taking an action that is different from the specific proposed action identified in the agenda, as long as the relevant subject matter has been reasonably identified in the agenda. The Directors will establish a regular meeting schedule that will be made available to the Members. The schedule will include not less than two meetings of the Board annually.

7.5.2 Special Meetings. Whenever the Chair of the Board or any three (3) Directors find that there is urgent business requiring Board action before the next regular Board meeting, a special meeting of the Board may be called. Such special meetings will be held upon as much written notice to each Board Member and all Members as is possible under the circumstances, which will not be less than three (3) days. However, this notice of special meetings may be waived if: 1) the waiver is by a writing signed by a quorum of Board members; and 2) as much notice of the meeting as practicable has been given to WECC Members via e-mail and posting on the WECC Web site.

7.5.3 Public and Web Site Notice. Public notice of each meeting of the Board will be placed on WECC's Web site at least ten (10) days before such meeting (or such lesser time as provided pursuant to Section 7.5.2). In addition, the Chief Executive Officer will provide notice of each meeting by first-class mail, facsimile or electronic mail to each member of the public who so requests and who has provided appropriate information regarding delivery of notice.

## **7.6 Open Meetings.**

Except as provided in Section 7.6.1, all regular and special meetings of the Board will be open to observation by any Member and any member of the public.

7.6.1 Closed Session. Notwithstanding the provisions of Section 7.6, upon an affirmative vote of two-thirds (2/3) of the Directors present, the Board may meet in closed session: 1) to consider the employment, evaluation of performance, or dismissal of an employee of WECC and to deliberate regarding decisions the Board may be called upon to make regarding the nomination, qualification, appointment, or removal of a member of the Board of Directors; 2) to discuss pending or proposed litigation and to receive confidential attorney-client communications from legal counsel; and 3) to receive and discuss any information that is privileged, trade secret, cybersecurity, critical energy infrastructure information (as defined by the FERC), protected from public disclosure by law or that the Board determines should be confidential in order to protect a legitimate public interest.

7.6.1.1 Attendance by an Affected Director. Closed sessions of the Board may not be attended by a Director under the following circumstances: 1) where the qualifications or performance of the Director or the Director's spouse or children are being discussed; 2) where the Director is employed by an entity that is or is likely to become a party to the litigation being discussed; and 3) where the Director or the Board determines that the Director would have a serious and substantial conflict of interest by becoming privy to confidential attorney-client or trade secret information that is to be presented to the Board in closed session.

7.6.1.2 Announcement of Closed Session. Before adjourning into closed session, the Chair of the Board will announce the purpose of the closed session in a manner that provides the public an understanding of the general subject matter to be discussed but which does not reveal sensitive or personal information. The Board will not discuss additional items outside the scope of this description.

7.6.1.3 Confidentiality of Closed Session. All Directors and others present will maintain the confidentiality of discussions and decisions made in closed session. The Board will appoint a secretary for closed session to keep a minute book for the purpose of recording the subject matter discussed in closed session and any actions taken in closed session.

## **7.7 Board Committees.**

7.7.1 Governance and Nominating Committee. The Chair will appoint a Governance and Nominating Committee that shall: 1) return slates of candidates as required by these Bylaws; 2) oversee implementation and amendment of these Bylaws; and 3) address such other issues pertinent to Governance as the Board may choose to delegate to it. The Governance and Nominating Committee will consist of one Director from each



of the six Member Classes eligible to elect such Directors and one Non-Affiliated Director. The Chair will designate one of the appointed Directors to be the Chair of the Governance and Nominating Committee.

7.7.2 Other Board Committees. The Board may appoint such Board committees as it deems necessary from time to time to carry out its business affairs. In appointing such committees, the Board will specify their purpose, membership, voting, notice and meeting procedures and such other direction as the Board may deem appropriate. The Board may appoint one or more Members or other persons to participate in Board committees as full voting members or as non-voting advisory members.

7.7.3 Standards of Conduct for Board Committee Members. Members of Board committees shall comply with the Board Member Standards of Conduct set forth in Appendix A.

## **8. Member Committees.**

### **8.1 Purpose.**

The WECC will have committees composed of its Members to advise and make recommendations to the Board. Such committees will include both standing committees required by these Bylaws and such other committees as the Board may choose to create.

### **8.2 Standing Committees.**

WECC will have the following standing committees:

8.2.1 Planning Coordination Committee. This committee will advise and make recommendations to the Board on all matters within the jurisdiction of the WECC pertaining to maintaining reliability through evaluating generation and load balance and the adequacy of the physical infrastructure of interconnected bulk electric systems within the Western Interconnection.

8.2.2 Operating Committee. This committee will advise and make recommendations to the Board on all matters within the jurisdiction of the WECC pertaining to maintaining reliability through the operation and security of the interconnected bulk western electric systems in the Western Interconnection.

8.2.3 Market Interface Committee. This committee will advise and make recommendations to the Board on the development of consistent Market Interface practices and compatible commercial practices within the Western Interconnection. It will consider matters pertaining to the impact of WECC's reliability standards, practices, and procedures on the commercial electricity market in the Western Interconnection, and facilitate analysis of the impact of electricity market practices on electric system reliability.

### **8.3 Other Committees.**

The Board may create such other committees as it may desire from time to time. The Board will specify the functions, duties and responsibilities of any such committee at the time of its creation. The Board will also specify the membership rules, quorum requirements, voting levels and meeting and notice requirements at the time of creation. Any changes in the membership rules, quorum requirements, or voting levels of a committee, once established by the Board, will require a seventy-five percent (75%) vote of the Board to alter. The specific function or sunset date for a committee will be designated by the Board at the time of the committee's creation. The committee will terminate its activities upon the completion of its function or the expiration of the date set by the Board.

### **8.4 Committee Assessment and Streamlining.**

8.4.1 **Assessment of Standing Committee Activities.** No later than three (3) years following the Organizing Meeting of the WECC, the Board of Directors will conduct a thorough review of the activities of each of the WECC's standing committees (as defined in Section 8.2 of these Bylaws) to assess whether they are effectively furthering the WECC's purposes in a manner that is consistent with: 1) the provisions of Section 2.3 of these Bylaws; and 2) the then-current state and the expected future evolution of the electric power industry within the Western Interconnection. The Board's review will assess whether there are any aspects of the standing committees' functions or procedures that impede development of WECC standards, obligations, processes, and decisions that are timely, fair, effective, and reasonable in view of the commercial, legal, regulatory, and economic needs and objectives of the affected Members. The Board will propose to the membership, at the first annual Member meeting held after completion of the review required by this Section 8.4.1, any changes to standing committee structures, functions, or procedures that the Board determines are warranted by its review.

#### **8.4.2 Dissolution of Additional Member Groups.**

8.4.2.1 Except as otherwise provided in Section 8.4.2.2 below, no later than three (3) years following the Organizing Meeting of the WECC, all WECC Member groups other than the WECC's standing committees (as defined in Section 8.2 of these Bylaws) will dissolve automatically. The Member groups to automatically dissolve under this Section 8.4.2.1 will include, without limitation, all WECC Member subcommittees, work groups, and task forces. There will thereafter be no committees, subcommittees, or other groups of WECC Members other than: 1) the WECC's standing committees (as defined in Section 8.2 of these Bylaws); and 2) any established by the Board after it determines that the committee, subcommittee, or other group, when established, will satisfy the terms of assessment for standing committees set forth in Section 8.4.1 above.

8.4.2.2 If, at the time specified for dissolution of Member groups that are not standing committees in accordance with Section 8.4.2.1 above, FERC-

approved Regional Transmission organizations carrying on commercial operations within the Western Interconnection do not cover at least one-half the load in the Western Interconnection, the Board may delay the implementation of the actions specified in Section 8.4.2.1 until no later than six (6) months after FERC-approved regional transmission organizations covering at least one-half the load within the Western Interconnection are in place and carrying on commercial operations.

## **8.5 Procedures for Committee Decision-Making.**

- 8.5.1 Reports to Board of Directors. Action by a committee will be in the form of a recommendation for Board action except in those instances in which the Board has, by resolution, specifically delegated to a committee the power to take action subject to an appeal to the Board by any Member. The recommendation of a committee must be forwarded to the Board for its action along with any minority or dissenting reports filed with the committee Chair or Vice-Chair.
- 8.5.2 Subcommittees, Task Forces and Ad Hoc Groups. Any Board or member committee may create such subcommittees, task forces or other ad hoc groups (“subcommittee”) as it deems appropriate to carry out the committee’s responsibilities consistent with these Bylaws and the direction of the Board. The composition, responsibilities and procedures of such groups shall be specified by the committee as appropriate; provided, however that: 1) the committee may only delegate to such subcommittee responsibilities that are within the scope of the committee’s responsibilities pursuant to these Bylaws and direction of the Board; and 2) the subcommittee may only make recommendations to the committee. A committee may create a subcommittee without prior approval of the Board; provided, however, that the committee shall promptly inform the Board in writing and at the next Board meeting regarding the creation of the subcommittee. The notification to the Board shall include a charter for the subcommittee that describes how members of the subcommittee will be selected, the duties of the subcommittee, and whether the committee has established a sunset date for review of (1) the need for the subcommittee and (2) the charter of the subcommittee.
- 8.5.3 Committee Officers. The Board will appoint the Chair and Vice-Chair of each committee. The Committee Chair or Vice-Chair will preside over all meetings of the committee and will report recommendations of the committee to the Board of Directors. The Chair and Vice-Chair will be responsible for informing the Board regarding minority opinions and other information required by the Board along with overall committee recommendations. Whenever the committee elects to form a subcommittee to represent regions or address specific tasks, the Chair (or in the absence of the Chair, the Vice-Chair) will have the power to appoint the members of such subcommittee from both members of the committees and non-members. Upon resignation of the Committee Chair, the Vice Chair shall serve as Chair until the Board appoints a replacement. Upon resignation of the Vice Chair, the Chair may appoint a temporary Vice Chair to serve until the Board appoints a replacement. Upon resignation of both the Chair and Vice Chair, the Chair of the Board may

appoint one or more temporary replacements to serve until the Board appoints permanent replacements.

8.5.4 Committee Membership. Except as provided in Section 8.5.4.1, any Member of WECC may designate one representative as its committee member to any standing committee or other committee. The WECC Member will have one vote at any committee meeting through that committee member. Any number of other persons may attend a committee meeting, but such persons will have no right to vote without a prior designation of representation by a WECC Member, except that interested stakeholders may, under Section 8.6, vote on proposed Reliability Standards or revisions to Reliability Standards.

8.5.4.1 Dual Representation for Functionally-Separated Members. A Member which has distinct and functionally-separated interests as both a transmission provider and a transmission customer may designate two representatives as committee members to any standing committee, one to represent each functionally separate interest. Each such committee member will have one vote. The privilege granted by this Section is subject to revocation by the Board on a case-by-case basis or generally whenever the Board finds, upon petition from any Member or its own motion, that such dual representation creates unfairness or imbalance within a committee.

8.5.5 Committee Voting and Classes.

8.5.5.1 Classes. For purposes of voting, committees will have three classes of membership:

8.5.5.1.1 Transmission Provider Members or Participating Stakeholders;

8.5.5.1.2 Transmission Customer Members or Participating Stakeholders;  
and

8.5.5.1.3 States and Provincial Members (Member Class 5).

8.5.5.2 Voting. Except as provided in Section 4.5.2, each committee member and Participating Stakeholder (if any) will have one vote. In order for a recommendation to be made to the Board, such recommendation must receive a simple majority vote of both: 1) committee members and Participating Stakeholders (if any) present and voting from the Transmission Provider Class; and 2) committee members and Participating Stakeholders (if any) present and voting from Transmission Customer Class. Committees will adopt voting and record-keeping procedures to ensure that committee voting is conducted consistent with these Bylaws. This requirement will also apply where decision making power has been delegated to a committee pursuant to Section 6.12.

8.5.5.2.1 State and Provincial Votes. The position of the state and provincial Class committee members must be recorded, but the failure of a proposed recommendation or decision to obtain a simple majority vote of the state and provincial committee members will not prevent the recommendation or decision from being posted for due process comment or sent to the Board of Directors.

8.5.6 Notice and Review of Committee Recommendations and Decisions (Due Process). Committee recommendations or decisions delegated to a committee pursuant to Section 6.12 will be subject to the due process provisions of this Section. Committee recommendations or decisions related to the development or approval of Reliability Standards will be subject to the provisions of this Section 8.5.6 and Section 8.6. Following a committee's development of a proposed recommendation or decision, the committee will post the proposed recommendation or decision on the WECC Web site for review and comment by other WECC Members, interested stakeholders (if the recommendation or decision concerns a Reliability Standard or revision), and other interested parties. The committee will provide all Members and Participating Stakeholders (if the recommendation or decision concerns a Reliability Standard or revision) e-mail notification of the posting and will allow at least thirty (30) days for comment on the proposal. The committee will consider all such additional input before reaching its final recommendation or decision. If the committee's recommendation or decision changes significantly as a result of comment received, the committee will post the revised recommendation or decision on the Web site, provide e-mail notification to Members and Participating Stakeholders (if the recommendation or decision concerns a Reliability Standard or revision), and provide no less than ten (10) days for additional comment before reaching its final recommendation or decision. Upon reaching its final recommendation or decision, the committee will forward it to the Board. Whenever it determines that a matter requires an urgent decision, the Board may shorten any time period set forth in this Section, provided that: 1) notice and opportunity for comment on recommendations or decisions will be reasonable under the circumstances; and 2) notices to Members will always contain clear notification of the procedures and deadlines for comment.

## **8.6 Procedures for Developing and Voting on Reliability Standards.**

8.6.1 Rights and Obligations of WECC Members and Participating Stakeholders. All WECC Members and interested stakeholders are entitled to participate in the development of and to vote on Reliability Standards or revisions to Reliability Standards, subject to any applicable obligations, limitations and conditions set forth in these Bylaws, and in accordance with the WECC Reliability Standards Development Procedures.

8.6.1.1 Participation. The right to participate in Reliability Standards development and voting includes the right to request the development or revision of a Reliability Standard, the right to receive notice of, attend and participate in

related WECC committee and subcommittee discussions, the right to review information relevant to a Reliability Standard or revision, the right to provide written comments on a proposed Reliability Standard or revision, the right to participate in committee or subcommittee voting on a Reliability Standard or revision and the right to file an appeal requesting review of any committee or subcommittee decision on a Reliability Standard or revision.

8.6.1.2 Voting. The procedures and conditions for voting by WECC Members and Participating Stakeholders are set forth in the Reliability Standards Development Procedures and in Section 8.5.5 and 8.5.5.2 of these Bylaws. A Participating Stakeholder may only vote on a proposed Reliability Standard or revision if they have applied for and been granted Participating Stakeholder status in accordance with Section 8.6.2 below. A Participating Stakeholder is only entitled to vote on Reliability Standards and revisions. A Participating Stakeholder is not entitled to vote in any other WECC committee balloting process or in elections for WECC Directors.

8.6.2 Participating Stakeholder Application Process. Any person or entity that is an interested stakeholder may apply to WECC for Participating Stakeholder status and, upon WECC's acceptance of such application, acquire the participation and voting rights set forth above in Section 8.6.1. WECC staff, under the direction of the CEO, will process applications and make the initial determination of eligibility for Participating Stakeholder status. Denial of Participating Stakeholder status may be appealed to the WECC Governance and Nominating Committee and, if denied by the Governance and Nominating Committee, to the WECC Board. A person or entity's Participating Stakeholder status will be maintained so long as the Participating Stakeholder continues to meet the requirements set forth in Section 3.21 and participates in at least one WECC meeting per year at which a Reliability Standard or revision is discussed and/or voted on. In the event a person or entity's Participating Stakeholder status lapses due to failure to meet the above minimum participation requirement, the person or entity may restore Participating Stakeholder status by re-applying for Participating Stakeholder status and attending a WECC meeting at which a Reliability Standard is discussed and/or voted on.

## **8.7 Notice of Committee Meetings.**

8.7.1 Standing Committees. The committee Chair, with the assistance of the Chief Executive Officer, will ensure that not less than ten (10) days' notice of all standing committee meetings is posted on the WECC Web site and is also provided to: 1) members of the committee; 2) Participating Stakeholders (if the meeting concerns development or approval of a Reliability Standard or revision); and 3) any WECC Member or member of the public requesting notice. A committee may take up any matter at a duly noticed meeting including matters not expressly identified in the notice; provided, however, that a final recommendation to the Board must be made in accordance with Section 8.5.6.

8.7.2 Other Committees. Notice of other committee meetings will be provided in the manner adopted for such notice by the affected Members and in accordance with the requirements of Section 8.6.1.

**8.8 Open Meetings.**

All committee meetings of the WECC (including Board committees) will be open to any WECC Member and for observation by any member of the public, except as set forth in policies on closed sessions that the Board may adopt for the purpose of preventing public disclosure of information that the Board might consider in closed session pursuant to Section 7.6.1.

**9. The Chief Executive Officer, Officers, and Employees.**

**9.1 Designation of Officers and Terms of Office.**

The WECC will have a Chief Executive Officer, a Secretary, and any other officers specified by the Board from time to time. The Chief Executive Officer will also hold the title of President of the WECC if applicable law requires the WECC to have a President. Each officer will be appointed by the Board and will serve for the term of office specified in the Board action appointing the officer and until his or her successor is appointed. Any two or more offices may be held by the same person except the offices of Chief Executive Officer and Secretary.

**9.2 Chief Executive Officer Qualifications.**

The Chief Executive Officer will be a person with senior management level experience and knowledge of bulk power electric transmission systems reliability, planning and operations.

**9.3 Standards Applicable to All Employees.**

A person may not be an officer or employee of WECC if: 1) the person is also the employee of or has a contractual relationship with any Entity, or any Affiliate of any Entity, that is eligible for membership in the WECC; or 2) the person has a financial interest that, in the judgment of the Board or the Chief Executive Officer, creates the fact or appearance of bias, undue influence or lack of objectivity regarding any action or decision of the WECC. The Board will adopt Standards of Conduct for officers and employees setting forth their duty of care, duty of loyalty, duty to avoid conflicts of interest and related matters intended to promote their neutrality, objectivity and professionalism. Upon adoption, such standards shall be attached hereto as Appendix B.

9.3.1 Exemptions from the disqualification criteria found in Section 9.3 are as follows:

9.3.1.1 Status as a residential electricity customer will not disqualify a person from employment with WECC.

9.3.1.2 A candidate for Chief Executive Officer or employee of WECC will not be disqualified for owning shares in a mutual fund because the mutual fund owns an interest in a Member or an Affiliate of a Member.

9.3.1.3 The disqualification standards described in Section 9.3 will not apply to disqualify a candidate who is receiving payments from a pension plan of a Member or an Affiliate of a Member in a form other than securities of such Member or Affiliate if the pension plan payments bear no relationship to the economic performance of the Member or Affiliate.

9.3.2 If an officer or employee receives a gift or inheritance of securities in any Member or Affiliate, he/she must resign or dispose of such securities within six (6) months of the date of receipt. Within six (6) months of the time a new Member is added in which an officer or employee owns securities, the officer or employee will resign or dispose of those securities.

#### **9.4 Employment.**

The Chief Executive Officer will be employed by the Board of Directors and will serve at the Board's pleasure. Any contract of employment with a Chief Executive Officer will permit the Board to dismiss the officer with or without cause.

#### **9.5 Chief Executive Officer's Duties.**

Subject to the Board's direction, the Chief Executive Officer or his/her designees will have the following duties, among others:

9.5.1 Execute policies at the direction of the Board and be responsible to the Board for the performance of the WECC functions described in Section 2;

9.5.2 Hire and fire staff within the constraints of the annual budget;

9.5.3 Perform administrative duties, such as preparing annual budgets for the approval of the Board, making employment decisions and ensuring conformance with regulatory requirements;

9.5.4 Develop and implement employment policies and standards of conduct; and

9.5.5 Accept or reject membership applications in accordance with the criteria of these Bylaws.

#### **9.6 Secretary's Duties.**

9.6.1 Maintain Member and Affiliates Lists. The Secretary will maintain continuously updated lists of all Members and Affiliates.

9.6.2 Maintain Official Records. The Secretary will keep minutes of all WECC Board and Member meetings and will receive and maintain minutes of committee meetings and all other official records of the WECC. Within five (5) business days after any vote taken by Members, the Board, a Class or any committee, the Secretary will provide notice to all Members and Interested Stakeholders (if applicable) of the results of



such a vote through postings on the website, email and/or other means of communication.

9.6.3 Maintain Web Site. The Secretary will oversee the creation, maintenance, and updating of the WECC's Web site and the information published through it.

## **10. Transmission Service Obligations.**

### **10.1 Non-Discriminatory Transmission Access.**

All Members owning, controlling or operating Transmission Facilities, or possessing rights to transmission capacity through contract, will provide interconnection and access to available transmission capacity to all other Members in a non-discriminatory manner through one of the following mechanisms: 1) a Regional Transmission Organization approved by the FERC in accordance with FERC Order 2000 and any successor order(s); 2) submission of an Open Access Tariff to the FERC; or 3) provision of non-discriminatory service in accordance with this Section 10.

10.1.1 Regional Transmission Organizations. A Member that is a Regional Transmission Organization approved by the FERC in accordance with FERC Order 2000 and any successor order(s), or a Member whose transmission capacity is controlled or operated by such a Regional Transmission Organization, will be deemed to be in compliance with Section 10 by virtue of its compliance with FERC Order 2000 and any successor order(s) and is exempt from Sections 10.2 through 10.4. Such a member will use the dispute resolution process specified in the bylaws, contracts, or tariffs of the applicable Regional Transmission Organization or other Local Regional Entity, provided that nothing in these Bylaws will prevent such a Member from using the dispute resolution process set forth in Section 11 where authorized or required by the bylaws, contracts, or tariffs of the applicable Regional Transmission Organization.

10.1.2 Members with Open Access Tariffs Filed with FERC. A Member which is not exempt pursuant to Section 10.1.1, but which has an Open Access Tariff which has been accepted for filing by the FERC, will be deemed to be in compliance with this Section 10 by virtue of its compliance with applicable FERC requirements governing its Open Access Tariff. Such Member is exempt from Sections 10.2 and 10.3; provided, however, that such Member must resolve transmission access disputes with other Member(s) in accordance with Sections 10.4, 10.5.2 and 11 of these Bylaws.

10.1.3 Other Members. Any Member subject to Section 10.1, but not eligible for exemption pursuant to Sections 10.1.1 or 10.1.2, will provide non-discriminatory interconnection and transmission access to other Members in accordance with Sections 10.2 through 10.5 of these Bylaws.

10.1.4 Canadian and Mexican Members. At the request of any Canadian or Mexican Member, the Board may adopt alternative provisions to this Section 10 applicable to the requesting Member provided that: 1) the alternative provisions differ from this

Section 10 to the minimum extent necessary to respect the laws and regulatory authorities governing the requesting Member; and 2) the alternative provisions require the requesting Member to provide interconnection and transmission service to other Members that is substantively equivalent to that required by this Section 10.

## **10.2 Service to be Provided.**

Members described in Section 10.1.3 will provide non-discriminatory interconnection and transmission service to other Members comparable to that which would be required of an entity subject to Sections 210 through 213 of the Federal Power Act. The provision of service may be pursuant to an agreement negotiated between such Members, or, if applicable, pursuant to a service agreement under a tariff filed in accordance with Section 10.3. In no event will these Bylaws require a Member to provide transmission service that FERC is precluded from ordering under Sections 212(g) and 212(h) of the Federal Power Act. However, nothing in these Bylaws will be construed as prohibiting any Member from providing retail wheeling voluntarily or pursuant to a state statute or a lawful decision of a regulatory agency or court of law. Nothing in this section is intended to imply that any non-jurisdictional entity Member is subject to FERC jurisdiction.

## **10.3 Open Access Tariffs.**

Except as provided in Section 10.3.1, Members described in Section 10.1.3 will file an Open Access Tariff or Tariffs consistent with Section 10.2 with the Secretary within sixty (60) days of becoming a Member. Upon the request of any Member, a Member subject to this Section 10.3 will provide a copy of its Open Access Tariff or Tariffs. Additionally, any change in any Open Access Tariff or Tariffs previously filed with the Secretary will be promptly filed with the Secretary after its adoption.

10.3.1 Petition for Exemption. Any Member described in Section 10.1.3 may petition the Board for an exemption from Section 10.3. The Board may grant such petition only if it finds that such Member is unlikely to receive a transmission service request. The granting of such a petition will not relieve the Member from the requirement to provide non-discriminatory access pursuant to Section 10.2 if the Member receives a transmission service request. If a Member has been granted an exemption from the filing of an Open Access Tariff by a Local Regional Entity based on criteria equivalent to this Section, such Member will be exempt from Section 10.3 of these Bylaws without the filing of a petition unless the Board determines otherwise.

## **10.4 Requests Involving Members of Regional Entities.**

If a request for transmission service involves only Members who are also members of the same Local Regional Entity and the tariffs or governing documents of such Local Regional Entity provide for a process for requesting interconnection or transmission service, the process of the Local Regional Entity, as opposed to that set forth in this Section 10, will be followed. To the extent the governing documents of the Local Regional Entity establish different principles regarding the provision of interconnection or transmission service than those of the WECC, the principles of the Local Regional Entity will govern as among members of the Local Regional Entity; provided, however, that Members who are members of Regional Entities who receive requests for interconnection or transmission service from

Members who are not members of the same Local Regional Entity will not be precluded from substantively responding to such requests in a manner consistent with the tariffs or governing documents of such Local Regional Entity, provided that such responses will be subject to the dispute resolution provisions of Section 11.

## **10.5 Request Process and Dispute Resolution.**

Members requesting interconnection or transmission service from Members described in Section 10.1.1 or 10.1.2 will do so in accordance with the applicable tariffs of the Member receiving the request. Members requesting such service from Members described in Section 10.1.3 will do so in accordance with this Section 10.5 in lieu of filing for such service pursuant to Sections 210 through 213 of the Federal Power Act.

10.5.1 Request Process and Interpretation of FERC Policy. Members described in Section 10.1.3 receiving requests from another Member for interconnection or transmission service pursuant to these Bylaws will respond to such requests in an expeditious and good faith manner. The Board may adopt procedural requirements regarding the processing of such requests to the extent it deems necessary and appropriate; provided, however, that the Board may not impose substantive obligations for the provision of interconnection or transmission service that are different from the substantive policies of the FERC applicable to such Members pursuant to Section 10.2. For the general guidance of arbitrators and Members and as it deems necessary, the Board may either request statements of policy from the FERC or adopt its own interpretations of FERC policy which will be subject to appeal to the FERC.

10.5.2 Dispute Resolution. Except as otherwise provided in Section 10.4, Members described in Sections 10.1.2 and 10.1.3, and any Member requesting interconnection or transmission service from such a Member, will resolve disputes regarding such requests in accordance with Section 11.

## **11. Dispute Resolution.**

Except as may be otherwise provided herein, and subject to the conditions set forth in Appendix C, Section A.1, disputes between Members and/or the WECC will be resolved pursuant to the WECC Dispute Resolution Procedures set forth in Appendix C. Matters subject to the jurisdiction of the WECC Compliance Hearing Body are not subject to the procedures in Appendix C.

## **12. Costs and Finances.**

### **12.1 Funding of Reliability Activities.**

12.1.1 U.S. Statutory Funding. The WECC shall fund all activities undertaken pursuant to Section 215 of the Federal Power Act in accordance with the funding provisions and procedures of that law and related FERC regulations and orders. The Board shall approve a budget for such activities in time for submission to the ERO and to the FERC for approval of such funding in accordance with applicable requirements.

12.1.2 International Funding. The WECC shall fund reliability activities undertaken pursuant to any agreements with appropriate Canadian or Mexican authorities in accordance with the provisions of those agreements.

12.1.3 Equitable Allocation of Funding. In adopting budgets for the costs of reliability activities, the Board shall endeavor to achieve an equitable allocation as between funding through Sections 12.1.1 and 12.1.2 based upon the net energy to load and other relevant factors consistent with applicable law, the Delegation Agreement and any International Reliability Agreements.

## **12.2 Dues.**

The Board may require Members and Participating Stakeholders to pay nominal annual dues consistent with applicable FERC requirements (or those of International Reliability Agreements as applicable) to cover reasonable costs of membership and/or participation in standards development that are not funded through Sections 12.1.1 or 12.1.2. Initial dues of a Member or Participating Stakeholder will be submitted with a completed application for membership or Participating Stakeholder status and will be for the prorated share of the full annual amount based on the Member's or Participating Stakeholder's actual months of membership or participation in the calendar year. In determining nominal dues, the Board may consider all relevant factors including, but not limited to, the ability of different classes of membership or Participating Stakeholders to pay such dues. The Board may also reduce, defer or eliminate the dues obligation of an individual Member or Participating Stakeholder for good cause shown.

## **12.3 Funding of Non-Statutory Activities.**

To the extent that the WECC elects to fund any activities not eligible for funding pursuant to Sections 12.1.1 and 12.1.2, it shall do so through the use of service fees, charges or dues applicable to the persons or entities that voluntarily participate in such activities. Participation in or funding of such activities shall not be a condition of membership in the WECC.

## **13. Amendments to these Bylaws.**

These Bylaws may be amended by either the Board or by the Members in accordance with the following procedures.

### **13.1 Amendment by the Board.**

Except for those provisions described below, the Board may approve an amendment of the Bylaws after providing not less than thirty (30) days' notice of the proposed amendment to all Members. Approval of such an amendment requires the affirmative votes of not less than two-thirds (2/3) of the Directors in office. Such amendment will become effective sixty (60) days after its approval by the Board unless the vote is appealed to the Members prior to that time. Such an appeal will occur whenever a majority of any Class files a petition with the Secretary seeking such amendment. A vote on the appeal will occur at the next Annual Meeting unless the Board calls a special meeting of the Members beforehand. Upon appeal, the amendment will be deemed approved unless a majority of all Members vote to rescind the amendment. Notwithstanding the foregoing, the Board may not amend Sections 6.2 through 6.10 of the Bylaws, Section 8.4, Appendix C or this Section 13.1 without submitting such amendment to the Members for their prior approval.

**13.2 Amendment by the Members.**

Upon petition filed with the Secretary by any Member or Director, at any Annual Meeting the Members may amend any provision of these Bylaws; provided: 1) the proposed amendment has first been presented to the Board and not adopted (this provision will not apply to amendments which the Board is prohibited from adopting); 2) Members have received not less than sixty (60) days' notice of the proposed amendment, the reasons there for and a statement of the Board's position regarding it; and 3) the amendment receives the affirmative votes of not less than two-thirds (2/3) of all Members.

**13.3 Amendments in Response to Mandatory Membership.**

If at any time, pursuant to legislation or otherwise, membership becomes mandatory for some or all Members, upon the request of the affected Member(s) the Board will consider amendments to these Bylaws appropriate to such mandatory membership.

**13.4 Amendments proposed by FERC.**

FERC, upon its own motion or upon complaint, may propose an amendment to these Bylaws pursuant to 18 C.F.R. § 39.10(b).

**14. Termination of Organization.**

The WECC may be terminated upon a vote of a majority of the Members in accordance with the provisions of Utah law, the Federal Power Act and the requirements of the Delegation Agreement and applicable International Reliability Agreements. Immediately upon such a vote, the Board will, after paying all debts of the WECC, distribute any remaining assets in accordance with the requirements of Utah law, the Internal Revenue Code and these Bylaws.

**15. Miscellaneous Provisions.**

**15.1 Limitation on Liability.**

It is the express intent, understanding and agreement of the Members that the remedies for nonperformance expressly included in Section 4.8 hereof shall be the sole and exclusive remedies available hereunder for any nonperformance of obligations under these Bylaws. Subject to any applicable state or federal law which may specifically limit a Member's ability to limit its liability, no Member, its directors, members of its governing bodies, officers or employees shall be liable to any other Member or Members or to third parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury which may occur or result from the performance or nonperformance of these Bylaws, including any negligence, gross negligence, or willful misconduct arising hereunder. This Section 15.1 of these Bylaws applies to such liability as might arise between Members under these Bylaws. This Section 15.1 does not apply to parties to the Agreement Limiting Liability Among Western Interconnected Systems ("WIS Agreement") with respect to matters covered by the WIS Agreement and does not apply to any liability provision in any other agreement.

**15.2 Indemnification.**

WECC shall indemnify and hold harmless its Directors, officers, employees, agents and advisors against any and all damages, losses, fines, costs and expenses (including attorneys'

fees and disbursements), resulting from or relating to, in any way, any claim, action, proceeding or investigation, instituted or threatened, arising out of or in any way relating to any action taken or omitted to have been taken (or alleged to have been taken or omitted to have been taken) by such person in connection with actions on behalf of WECC, and against any and all damages, losses, fines, costs and expenses (including attorneys' fees and disbursements) incurred in connection with any settlement of any such claim, action, proceeding or investigation unless such action of such person is determined to constitute fraud, gross negligence, bad faith or willful misconduct with respect to the matter or matters as to which indemnity is sought.

**15.3 No Third Party Beneficiaries.**

Nothing in these Bylaws shall be construed to create any duty to, any standard of care with reference to or any liability to any third party.

**15.4 Informal Inquiries for Information.**

Nothing in these Bylaws shall preclude: 1) a Member from making an informal inquiry for information outside of the procedures outlined in Section 4.6.13 hereof to another Member and 2) that other Member from responding voluntarily to that informal inquiry, provided, however, that any such response to an informal inquiry for information shall not be binding upon that other Member and shall be used by the Member making the informal inquiry for informational purposes only.

**16. Incorporation.**

WECC shall organize itself as a non-profit corporation pursuant to the laws of the state of Utah regarding non-profit corporations under the name "Western Electricity Coordinating Council." All Members agree to take no actions that would contravene the ability of the WECC to maintain its status as a non-profit corporation existing pursuant to the Utah Act. The Board shall adopt these Bylaws as the Bylaws of the WECC as a non-profit corporation.

WECC is intended to qualify as an organization described in Section 501(c)(6) of the Internal Revenue Code. No part of any net earnings of the WECC shall inure to the benefit of any Member or individual. Upon liquidation, to the extent consistent with the Internal Revenue Code and Utah law, any monies remaining from assessments paid by Members for the costs of the WECC shall be rebated to Members in proportion to their payments. Any remaining assets of the WECC shall be transferred to another organization exempt from tax under Section 501(a) of the Internal Revenue Code, or government agency, promoting the same purposes as the WECC, as designated by the Board.

**17. Governing Law.**

Unless otherwise agreed, if any conflict of law arises under these Bylaws among the Members, the laws of the United States of America shall govern, as applicable. The venue for any legal action initiated under these Bylaws which concerns a specific request for transmission service shall be the city and state (or province) in which the headquarters of the Member providing the service is located. The venue for any other legal action initiated under these Bylaws shall be the city and state (or province) in which the headquarters of the WECC is located.

## **APPENDICES**

- A. Board Member Standards of Conduct
- B. Officers and Employees Standards of Conduct
- C. WECC Dispute Resolution Procedures

**Appendix A**  
**Standards of Conduct for**  
**Members of the WECC Board of Directors**

By accepting appointment to the Board of Directors (the “Board”) of the Western Electricity Coordinating Council (the “WECC”), a Director agrees to abide by the duties required of corporate directors and trustees. Utah law (and similar law in other states) imposes quasi-fiduciary duties of care and loyalty on all corporate directors or trustees, including directors and trustees of nonprofit corporations. For as long as he or she remains a member of the Board of Directors of the WECC, a Director will abide by the following standards of conduct.

- I. Duty of care. The Directors of a corporation are bound to use due care and to be diligent in respect to the management and administration of the affairs of the corporation. This duty of care is generally thought to have two components: the time and attention devoted to corporate affairs and the skill and judgment reflected in business decisions.
  - A. Each Director will regularly attend Board of Directors meetings, digest the materials sent to him or her, participate in Board discussions and make independent inquiries as needed.
  - B. In voting on any matter before the Board or otherwise acting in his or her capacity as a Director, each Director will:
    1. make reasonable inquiry to inform himself or herself of the nature and consequences of the matter or action at issue;
    2. exercise, at a minimum, the degree of care, skill, and diligence that an ordinarily prudent business person would exercise under similar circumstances; and
    3. act in a manner the Director, in the exercise of his or her independent judgment, believes to be in the best interests of the WECC and the membership of the WECC, taken as a whole.
  - C. In exercising the duty of care described in paragraphs IA and B above, a Director has the right to rely on statements by the persons immediately in charge of business areas of the WECC, to rely on professionals and experts (such as engineers, accountants and lawyers) and to rely on committees of the WECC, unless facts or circumstances appear which would prompt further concerns of the ordinarily prudent person.
- II. Duty of loyalty. The duty of loyalty imposes on a Director the obligation to remain loyal to the WECC, acting at all times in the best interests of WECC and its Members as a whole and unhampered by any personal pecuniary gain. This duty does not preclude a Director from being employed in a competing or related business so long as the Director acts in good faith and does not interfere with the business of the WECC.
  - A. Each Director will carry out his or her duties as a Director in good faith.



- B. Each Director will refrain from using any influence, access, or information gained through his or her service as a Director to confer any improper personal benefit (financial or otherwise) upon himself or herself, any family member, or any person living in the Director's household.
- C. Each Director will refrain from using any influence, access, or information gained through his or her service as a Director to confer an improper benefit (financial or otherwise) on any organization:
  - 1. for which the Director serves as an officer, director, employee, consultant, or in any other compensated or management position; or
  - 2. in which the Director or any family member or person living in the Director's household has a material financial interest (whether as a shareholder, partner, or otherwise).
- D. To the extent permitted by law, each Director will maintain the confidentiality of:
  - 1. any confidential or proprietary information of the WECC disclosed or available to the Director;
  - 2. any confidential or proprietary information of WECC Member(s) to which the Director has access by virtue of his or her status as Director; and
  - 3. any confidential or proprietary information of third parties that has been provided to the WECC or the Board on condition of confidentiality.
- E. Conflicts of Interest. Because conflicts of interest may arise from time to time, specific guidelines are provided. In general, conflicts of interest involving a Director are not inherently illegal nor are they to be regarded as a reflection on the integrity of the Board or of the Director. It is the manner in which the Director and the Board deal with a disclosed conflict that determines the propriety of the transaction.

Directors of nonprofit corporations may have interests in conflict with those of the corporation. The duty of loyalty requires that a Director be conscious of the potential for such conflicts and act with candor and care in dealing with these situations.

The following are guidelines for Directors with actual or potential conflicts of interest:

- 1. Each Director has a responsibility to recognize potential conflicts of interest and to be guided when acting as a Director by his or her independent judgment of what is in the best interests of the WECC and the membership of the WECC, taken as a whole. If any Director has questions about whether a conflict of interest exists, he or she may make inquiry to the Chief Executive Officer of the WECC for advice.

2. Potential conflicts of interest may arise because of a Director's private, individual interests (personal conflicts of interest) or because of relationships the Director may have with other organizations or interest groups (organizational conflicts of interest). Current or past employment or other compensation-based relationships with one or more WECC Members are examples of potential organizational conflicts of interest. Whether a potential conflict of interest is personal or organizational, in all cases involving WECC affairs a Director's conflicting interests are subordinate to those of the WECC and the membership of the WECC, taken as a whole.
3. Personal conflicts of interest.
  - a. Personal conflicts of interest exist if a Director, a member of the Director's family, or a person sharing the Director's household: 1) has a material financial interest in a matter or transaction that comes before the Board for action; or 2) stands to receive a benefit (in money, property, or services) from a transaction involving the WECC to which the person is not legally entitled.
  - b. In cases of personal conflicts of interest, the affected Director's obligations are to:
    - (1) disclose to the Board, before the Board acts with respect to that matter, the material facts concerning the Director's personal conflict of interest; and
    - (2) refrain from voting, and from attempting to influence the vote of any other Director(s), in those matters in which the Director has a personal conflict of interest.
4. Organizational conflicts of interest.
  - a. An organization has a "direct" conflict of interest if a decision by the Board would confer material benefits on that organization that other WECC Members would not share, or impose material detriments or costs on that organization that other WECC Members would not share. The fact that many if not all Members are affected to some extent by Board decisions on core issues such as standards, new transmission lines and their ratings, does not create or constitute a "direct" conflict of interest.
  - b. It is not a "direct" conflict of interest for a Director to be associated with an organization or an interest group that may stand to benefit from decisions made or actions taken by the Board, so long as the Director does not attempt to use his or her position as a Director to confer special benefits on associated organizations or interest groups when other WECC Members would not share in those benefits.

- c. In cases of potential “direct” organizational conflicts of interest, the affected Director’s obligations are to:
- (1) disclose to the Board, before the Board acts with respect to the matter, the material facts concerning the organizational conflict of interest; and
  - (2) refrain from voting and from attempting to influence the vote of any other Director(s) with respect to the proposed action or decision.

## **Appendix B Officers and Employee Standards of Conduct**

By accepting employment with the Western Electricity Coordinating Council (the “WECC”), an Employee agrees to abide by these Standards of Conduct. For the purpose of these Standards, an Employee includes each and all officers, employees and substantially full-time consultants and contractors of the WECC.

- I. Duty of care. The Employees of the WECC are bound to use due care and to be diligent in respect to the management and administration of the affairs of the corporation. This duty of care is generally thought to have two components: the time and attention devoted to corporate affairs and the skill and judgment reflected in business decisions.

Employees shall not have any outside employment that limits in any way their ability to fulfill their employment responsibilities to WECC. If an Employee has any question about whether outside employment is consistent with this standard, they should consult with their supervisor.

- II. Duty of loyalty. The duty of loyalty imposes on an Employee the obligation to remain loyal to the WECC, acting at all times in the best interests of WECC and its Members as a whole and unhampered by any personal pecuniary gain. The WECC expects all Employees to avoid adversely affecting the public’s confidence in the integrity and reputation of the WECC. Any conduct or activities of any Employee should be capable of being justified and withstanding public scrutiny.
- A. Each Employee will carry out his or her duties as an Employee in good faith, with integrity and in a manner consistent with these Standards and all applicable laws governing the WECC.
- B. Each Employee will refrain from using, or creating the appearance of using, any influence, access, or information gained through his or her service as an Employee to confer any improper personal benefit (financial or otherwise) upon himself or herself, or Family Member.<sup>1</sup> Employees shall not accept gifts or entertainment that would tend to affect, or give the appearance of affecting, the performance of their duties; provided, however, that Employees may accept de minimus food or entertainment or non-cash gifts received as part of a social or special occasion in amounts not to exceed \$1000 per source per year.
- C. Each Employee will refrain from using, or creating the appearance of using, any influence, access, funds or information gained through his or her service as an Employee to confer an improper benefit (financial or otherwise) on any organization. The

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<sup>1</sup> For purposes of these Standards, a Family Member includes a spouse, domestic partner, child of the Employee, or a relative living in the same home as the Employee.

obligation to avoid the appearance of impropriety shall apply in particular to any organization:

1. for which the Employee is serving or has in the past served as an officer, director, employee, consultant, or in any other compensated or management position; or
  2. in which the Employee, or Family Member has a material financial interest known to the Employee (whether as a shareholder, partner, or otherwise).
- D. Employees shall not use their WECC position, WECC funds or WECC resources to support any political party, candidate or proposition except as expressly authorized by the Board.
- E. To the extent permitted by law, each Employee shall maintain the confidentiality of:
1. any confidential or proprietary information of the WECC disclosed or available to the Employee;
  2. any confidential or proprietary information of WECC Member(s) to which the Employee has access by virtue of his or her status as Employee; and
  3. any confidential or proprietary information of third parties that has been provided to the WECC or the Board on condition of confidentiality.
- F. Conflicts of Interest. The following conflicts of interest policy shall apply to all WECC Employees. Conflicts of interest may arise from time to time. In general, conflicts of interest involving an Employee are not inherently illegal, nor are they to be regarded as a reflection on the integrity of the WECC or of the Employee. It is the manner in which the Employee and the WECC deal with a disclosed conflict that determines the propriety of the transaction. The following are guidelines for Employees with actual or potential conflicts of interest:
1. In general, personal conflicts of interest exist if an Employee, or a Family Member, has a material financial interest in a matter or transaction that comes before WECC for action, or stands to receive a benefit (in money, property, or services) from a transaction involving WECC to which the person is not legally entitled. For purposes of determining whether stock constitutes a material financial interest, see Paragraph F(6) below.
  2. Organizational conflicts of interest exist if an Employee, or a Family Member, has a relationship with an organization or interest group that would cause a reasonable person to believe such Employee's judgment, loyalty, or objectivity might be influenced in a way that is adverse to the interests of WECC.
  3. Where there is any question about potential conflicts of interest, the Employee shall disclose to the Chief Executive Officer as soon as possible and prior to when

WECC takes action with respect to that matter, the material facts concerning the Employee's personal conflict of interest, and refrain from participating in, or from attempting to influence the action of any Directors or Employee(s) of WECC regarding those matters in which the Employee has a conflict of interest.

4. No Employee may be an employee, director of, or consultant to or provide services to or be associated in any way with any WECC Member without full disclosure to, and written consent of, the Chief Executive Officer. To the extent that an Employee becomes aware that a Family Member is or will in the future be engaged in activity described in this Paragraph F(4), the Employee shall promptly notify the Chief Executive Officer, who shall review all the material facts and determine whether they constitute a conflict of interest pursuant to Paragraphs F(1) and F(2), above.
5. No Employee shall participate in any electric energy transaction other than for ordinary personal use except to the extent necessary to, and consistent with, the functions of WECC. Participation in an energy transaction includes, but is not limited to, purchasing, selling, marketing, or brokering of electricity, ancillary services, electricity transmission or electricity distribution. To the extent that an Employee becomes aware that a Family Member is or will in the future be engaged in activity described in this Paragraph F(5), the Employee shall promptly notify the Chief Executive Officer who shall review all the material facts and determine whether they constitute a conflict of interest pursuant to Paragraphs F(1) and F(2), above.
6. All Employees shall promptly disclose to the CEO and the Chair of the Board any direct or indirect financial interest in excess of \$5,000 (including the direct or indirect ownership of securities) held by the Employee or a Family Member living with the Employee<sup>2</sup> in any Electric Line of Business entity as defined in Section 3.15 of the Bylaws doing business in the Western Interconnection. Upon such disclosure, the CEO and the Chair of the Board shall determine whether such financial interest constitutes a conflict of interest, or the appearance thereof, in light of the duties of the Employee, the ability to divest such financial interest without undue hardship and the totality of the circumstances. In response to such disclosure, the CEO and the Chair may impose such remedies as are reasonable under the circumstances and consistent with section 9.3 of the Bylaws. Such remedies may include, but are not limited to, restrictions on the Employee's duties or involvement in certain matters, transfer of the Employee to another position, broader disclosure of the financial interest, voluntary or mandatory divestiture of the interest (in whole or in part) or other remedies. Pursuant to section 9.3.2 of the Bylaws, if an Employee (not a Family Member) receives a gift or inheritance of securities

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<sup>2</sup> Nothing in this section shall require an Employee to investigate the financial interests of Family Members not living with the Employee. However, to the extent known to the Employee, the financial interests of a Family Member not living with the Employee may create a potential conflict of interest (or appearance thereof) subject to Sections II(B) and/or II(F)(1) of these standards, in which case disclosure pursuant to Section II(F)(3) is appropriate.

of a Member of the WECC, or if a new Member joins the WECC in which the Employee (not a Family Member) holds securities, the Employee must resign or divest such securities within six months thereafter. For the purposes of this section, none of the following shall constitute a direct or indirect financial interest:

- a. An interest that exists through diversified mutual funds;
- b. An interest that exists for six months following receipt of a gift or inheritance of securities of a Market Participant or acceptance of employment with the WECC, whichever is later (provided that employees of the WSCC shall have two years from the WECC organizational meeting to divest securities in their possession as of that date);
- c. An interest that exists through a pre-existing participation in a qualified defined benefits pension plan or health benefits plan of a Market Participant so long as the benefits under such plan do not vary with the economic performance or value of the securities of such Market Participant.

## Appendix C

### WECC Dispute Resolution Procedures

#### C. DISPUTE RESOLUTION.

C.1 Obligation To Comply with Dispute Resolution Procedures. If any dispute concerning one or more issues identified in Section C.2 below arises between a Member and one or more other Members, or between one or more Members and WECC, all of the parties to the dispute shall, to the extent permitted by law, be obligated to comply with the dispute resolution procedures specified in these Bylaws (except to the extent all of the parties to the dispute may agree otherwise as provided in Section C.4 below). Only Members and WECC have the right to invoke the provisions of this Appendix C and, except where all affected parties have separately agreed otherwise with respect to a particular dispute, only Members and WECC are obligated to carry out the dispute resolution procedures set forth herein. Any dispute subject to the provisions of this Appendix C to which WECC is made a party shall be subject to the additional requirements specified in Section C.3 below if the dispute is initiated by a party other than WECC. To the extent permitted by law (and except as otherwise permitted by the provisions of Section C.6.3), no party to a dispute subject to the provisions of this Appendix C may pursue any other available remedy with respect to the dispute until all of the parties to the dispute have fully complied with the dispute resolution procedures specified herein, *provided, however*, that if any party to a dispute subject to the provisions of this Appendix C refuses to comply with the dispute resolution procedures specified herein, all other parties to the dispute shall subsequently be relieved of any further obligation to comply with these dispute resolution procedures before pursuing other remedies in connection with that dispute.



C.2 Issues Subject to Dispute Resolution Procedures. Any dispute between or among the parties identified in Section C.1 above (that the parties to the dispute do not resolve through negotiations between or among themselves) shall be subject to the dispute resolution procedures set forth in this Appendix C if the dispute concerns: (i) the application, implementation, interpretation, or fulfillment of any guidelines, criteria, policies, procedures, or Bylaws of WECC or the North American Electric Reliability Council (or any successor organization); or (ii) any matter specified in Section C.6.2 below; except that any matter that is subject to the jurisdiction of the WECC Compliance Hearing Body is not subject to the requirements of this Appendix C. Notwithstanding the foregoing provisions of this Section C.2, however, neither WECC nor any Member shall be obligated to comply with the dispute resolution procedures of these Bylaws if: (a) the matter in dispute falls within the scope of the dispute resolution procedures set forth in the governing agreements of the Western Regional Transmission Association, the Southwest Regional Transmission Association, or the Northwest Regional Transmission Association to the extent that such organizations continue to exist; (b) the dispute is between two or more Members (or WECC), all of which, at the time of the dispute, are parties to the WECC Reliability Management System Agreement and the matter is within the scope of the dispute resolution procedures set forth in that agreement; or (c) the dispute is between two or more Members, all of which, at the time of the dispute, are parties to a separate agreement or treaty or where an applicable tariff, rate schedule, or other legal obligation of one of the parties provides for the parties to resolve the dispute in a manner other than in accordance with the provisions of this Appendix C of the Bylaws. With regard to a transmission access matter pursuant to Sections 10.1.2, 10.1.3, 10.5 and C.6.2.3, however, members agree that their rights and obligations pursuant to

Sections 210 and 211 of the FPA shall not by themselves supersede or relieve them of their obligation, if any, to participate in the procedures set forth in this Appendix C.

C.3 Limitations on Members' Rights To Make WECC a Party to a Dispute. In addition to the other provisions of this Appendix C of the Bylaws, any dispute (other than a dispute initiated by WECC) to which WECC is made a party shall be subject to the limitations set forth in Sections C.3.1 and C.3.2 below.

C.3.1 Bases for Using Dispute Resolution Procedures To Challenge WECC Action.

Subject to any limitation set forth in these Bylaws or in applicable statute, regulation or FERC order, one or more Members may use the dispute resolution procedures specified in this Appendix C to challenge any final action of WECC only on one or more of the following bases: (i) the action is contrary to applicable law or regulation; (ii) the action is contrary to WECC's Articles of Incorporation or these Bylaws (including WECC's purposes as set forth in those documents); (iii) the action was taken in violation of applicable procedures of WECC governing that action; or (iv) the action encompasses a decision in which there was plain error material to the decision. For purposes of this Appendix C, action taken by WECC shall be deemed final if: (a) the action has been taken or adopted or approved or accepted by WECC's Board of Directors (other than by a motion specifically providing that the action is conditional or will have temporary application not to exceed six months); (b) all conditions specified to make any conditional action of WECC's Board of Directors effective have been fulfilled; or (c) the action has been taken or adopted or approved or accepted by a committee, subcommittee, task force, or other group or person acting under authority of WECC without any provision making the action

subject to further approval or adoption or acceptance by the Board of Directors. Nothing contained in this Appendix C shall limit any rights any Member (or any other party) may have under applicable law or regulation to initiate or participate in an administrative or legal action to which WECC is made a party in accordance with applicable provisions of law or regulation.

- C.3.2 Obligation to Bear WECC's Share of Facilitator Costs. If one or more Members initiate a dispute under this Appendix C to challenge an action of WECC, the Member(s) initiating the challenge shall be obligated to bear all of the costs of facilitators' services incurred to comply with the requirement of Section C.5 below, except to the extent WECC agrees to pay a share of the costs of facilitators' services.
- C.4 Ability to Modify Dispute Resolution Procedures by Agreement. Any provision of the dispute resolution procedures set forth in this Appendix C may be modified, waived, or omitted by agreement of all of the parties to the dispute. Parties to a dispute subject to these provisions are obligated to comply with its procedures unless all of the parties to the dispute agree to do otherwise. The manner in which the dispute resolution procedures set forth in this Appendix C may be varied include (by way of example and not as limitation): the manner of selecting a facilitator or arbitrator; the procedures or time lines to be followed during mediation or arbitration; the grounds or forum or right to appeal an arbitrator's decision; the manner of allocating fees and costs associated with the dispute; whether the parties are obligated to proceed to arbitration if the dispute is not resolved through mediation; and whether a decision rendered through arbitration is binding on the parties. In addition, any dispute that does not fall within the scope specified in Section C.2 above may

be resolved according to the procedures set forth in Appendix C of these Bylaws if all of the parties to the dispute agree to do so.

C.5 Mediation.

C.5.1 Notice to Other Parties and WECC's Chief Executive Officer. To initiate the dispute resolution process with respect to a dispute governed by the provisions of this Appendix C, the Member or WECC that has elected to initiate the dispute shall deliver to all other parties to the dispute and to WECC's Chief Executive Officer (whether or not WECC is a party to the dispute) written notice invoking the dispute resolution procedures set forth in this Appendix C (a "Dispute Notice").

C.5.1.1 The Dispute Notice shall: (i) include a brief, general description of the matter(s) in dispute; (ii) include a complete list of all other Members the party submitting the Dispute Notice intends to make a party to the dispute; and (iii) state whether or not WECC is to be made a party to the dispute.

C.5.1.2 Within five business days of receiving a Dispute Notice, any party to the dispute may elect to deliver a brief supplemental description of the dispute to WECC's Chief Executive Officer.

C.5.1.3 Within 10 business days of receiving an initial Dispute Notice, WECC's Chief Executive Officer shall: (a) publish (or cause to be published) in WECC's newsletter or on its electronic bulletin board a notice containing a list of the parties to the dispute and a summary of the descriptions of the matter(s) in dispute provided by the parties to the dispute; and (b) deliver to each party to the dispute a copy of WECC's then-current standing list of

qualified facilitators, knowledgeable in the matters addressed by WECC (as approved by the Board of Directors).

C.5.1.4 No person may be listed on WECC's standing list of qualified facilitators unless the person has agreed to: (i) disclose, at any time the person is selected to serve as a facilitator under this Appendix C, any personal or financial interest the facilitator may have with respect to the matter(s) in dispute (including any indirect personal or financial interest that could arise because of interests or relationships affecting any of the facilitator's immediate family members); (ii) disclose any relationship the facilitator may have with any party to the dispute that is not permitted under Section C.5.2 below; and (iii) abide by all applicable provisions of these Bylaws, including restrictions on disclosure of matters discussed and information exchanged during mediation as provided in Section C.5.3 below.

C.5.2 Selection of a Facilitator. Within 10 calendar days after the delivery of a Dispute Notice, the parties to the dispute shall select a neutral facilitator by mutual agreement. If the parties to the dispute cannot agree on a facilitator within 10 calendar days after delivery of a Dispute Notice, the facilitator shall be selected from WECC's standing list of qualified facilitators as follows: The parties to the dispute shall take turns striking names from WECC's standing list of qualified facilitators until there is only one name remaining. (The parties to the dispute shall draw lots to determine the order in which they take turns striking names.) The last person whose name remains on the list shall serve as the facilitator. No facilitator other than a facilitator chosen by agreement of all the parties to the dispute may (i) have a

personal or financial interest in the matter(s) in dispute (including any indirect personal or financial interest that could arise because of interests or relationships affecting any of the facilitator's immediate family members); or (ii) be (or have an immediate family member who is) a past or present director, commissioner, officer, employee, consultant, agent, or other representative of any of the parties to the dispute. If the facilitator selected through the process of striking names specified above is disqualified under the preceding sentence, the facilitator whose name was stricken last shall serve in his or her place. In addition, if WECC is a party to a dispute initiated by one or more Members, turns striking names from the standing list of qualified facilitators shall alternate between WECC on the one hand and all other parties to the dispute on the other.

C.5.3 Mediation Process. The facilitator and representatives of all of the parties to the dispute shall meet within 14 calendar days after the facilitator has been selected and attempt in good faith to negotiate a resolution to the dispute. Each party's representative designated to participate in the mediation process must have the authority to settle the dispute (or, at a minimum, be authorized to negotiate on behalf of the party and make recommendations with respect to settlement of the dispute if final authority to approve a settlement is reserved to a party's board, executive committee, commission, or other governing body). At the parties' initial meeting with the facilitator, the facilitator shall, after soliciting input from the parties to the dispute, set the schedule for further meetings among the parties to the dispute (subject to the 60-day maximum mediation period specified in Section C.5.6 below). The parties to the dispute shall comply with the schedule set by the facilitator and attempt in good faith at every meeting to negotiate a resolution to the dispute. To the

extent permitted by law, neither the facilitator nor any party to the dispute may publicly disclose, rely on, or introduce as evidence in any subsequent arbitration, FERC proceeding, Canadian Regulatory Authority proceeding, proceeding before a Mexican Regulatory Authority, appeal, or litigation concerning the same or any related dispute: (i) any views expressed or suggestions made by another party to the dispute with respect to a possible settlement of the dispute; (ii) admissions made by another party to the dispute in the course of the mediation proceedings; (iii) proposals made or views expressed by the facilitator; or (iv) the fact that another party to the dispute has or has not indicated willingness to accept a proposal for settlement made by the facilitator. In those cases in which a party to a dispute subject to the provisions of this Appendix C of the Bylaws is a membership organization (including WECC, if applicable), nothing in the preceding sentence shall prohibit that organization from reasonably communicating with its members and governing body to share general information about the dispute, such as the parties, status, disputed issues, and positions of each of the parties with respect to the disputed issues.

C.5.4 Referral for Resolution. With the consent of all parties to the dispute, a resolution may include referring the matter to a technical body (such as a technical advisory panel of WECC) for resolution or an advisory opinion, to arbitration, directly to FERC or, in a dispute involving a Canadian Member, directly to the appropriate Canadian Regulatory Authority, or, in a dispute involving a Mexican Member, directly to the appropriate Mexican Regulatory Authority.

C.5.5 Mediation Participation by WECC Staff When WECC Not a Party. If, during the course of mediation to which WECC is not a party, the facilitator or any party to the dispute wishes to solicit the views of WECC concerning the application,

implementation, interpretation, or fulfillment of any guidelines, criteria, standards, policies, or procedures of WECC, the facilitator may request or permit the submission of WECC staff views only if: (i) any participation by WECC staff takes place exclusively in the presence of all parties to the dispute; (ii) participating WECC staff members agree to be equally available upon request to all parties to the dispute; and (iii) participating WECC staff members agree to comply with the restrictions on disclosure contained in Section C.5.3.

C.5.6 Mediation Deemed at Impasse After 60 Days. If the parties to the dispute have met and negotiated in good faith in accordance with the schedule set by the facilitator but have not succeeded in negotiating a resolution of the dispute within 60 calendar days after the first meeting with the facilitator pursuant to Section C.5.3 above, the parties to the dispute shall be deemed to be at impasse and, except as otherwise provided in Section C.5.6.2 below, shall also be deemed to have fulfilled their obligations under Section C.1 of these Bylaws to fully comply with the dispute resolution provisions before pursuing any other available remedy. If any party participating in the mediation process is subject to a contractual or statutory limitations period with respect to the matter in dispute, and the limitations period will expire before the 60-day period for mediation under this Section C.5.6 is completed, then the parties shall be deemed at impasse on the seventh calendar day preceding the expiration of the shortest applicable limitations period.

C.5.6.1 Disputes Not Subject to Provisions of Section C.6.2. Unless the matter in dispute is subject to the provisions of Section C.6.2 below, at any time after the parties to the dispute are deemed at impasse, the dispute may be submitted to binding arbitration in accordance with the procedures set forth in Section C.7 of these Bylaws (but only by agreement of all of the parties to the dispute). If the matter in dispute is subject to the provisions of



Section C.6.2 below, the parties' obligations with respect to submitting the matter to binding arbitration under Sections C.6 and C.7 of these Bylaws shall be as specified in Section C.5.6.2 below. In all other cases, if the parties to the dispute do not agree to submit the dispute to binding arbitration in accordance with the procedures set forth in Section C.7 of these Bylaws, any party to the dispute may at any time thereafter pursue any other remedy available under regulation, law, or equity (subject to the restrictions on disclosure set forth in Section C.5.3 above).

C.5.6.2 Disputes Covered by Section C.6.2. If the parties to a dispute concerning a matter subject to the provisions of Section C.6.2 either: (i) are deemed at impasse after attempting to resolve the matter through mediation as provided in Sections C.5.1 through C.5.6 above; or (ii) have agreed to submit the matter directly to binding arbitration without attempting to resolve the matter through mediation as provided in Sections C.5.1 through C.5.6 above, the parties to the dispute shall submit the matter to binding arbitration in accordance with the procedures set forth in Sections C.6 and C.7 of these Bylaws.

C.5.7 Costs of Facilitator's Services. Except as otherwise provided under Section C.3.2, the costs of the facilitator's services shall be born equally by all parties to the dispute unless the parties to the dispute agree otherwise, but the parties also intend that the costs of mediation should be taken into account in any resolution proposed through the mediation process.

C.5.8 Notice to WECC of Completion of Mediation. Within 10 calendar days after either: (i) reaching a negotiated resolution through the mediation process set forth in Section C.5; or (ii) reaching deemed impasse in accordance with Section C.5.6 above, the parties to the dispute shall jointly deliver to WECC's Chief Executive Officer a written notice briefly describing the outcome of the mediation process. Promptly

after receiving written notice describing the outcome of a mediation conducted in accordance with Section C.5, WECC's Chief Executive Officer shall publish (or cause to be published) in WECC's newsletter or on its electronic bulletin board a brief description of the outcome of the mediation, together with a list of all of the parties to the dispute.

C.6 General Provisions Relating to Binding Arbitration.

C.6.1 Matters for Which Binding Arbitration is Elective. Except with respect to any dispute that concerns one or more matters specified in Section C.6.2 below, the binding arbitration procedures set forth in Section C.7 may be invoked only by agreement of all of the parties to the dispute to be arbitrated and are solely for the convenience of WECC and its Members. If a dispute governed by this Appendix C does not concern a matter specified in Section C.6.2 below, a party to the dispute shall be deemed to have fulfilled its obligations to comply with Appendix C of these Bylaws (irrespective of whether the parties to the dispute agree to proceed with binding arbitration) to the extent that either: (i) that party has fully performed the obligations set forth in Sections C.1 through C.5.8; or (ii) all of the parties to the dispute have agreed to a different process for resolving the dispute and the agreed-upon process has been fully carried out.

C.6.2 Matters for Which Binding Arbitration Is Obligatory. If a dispute is governed by Appendix C of these Bylaws and is not resolved through the process of mediation in accordance with Sections C.5.1 through C.5.6 above, the parties shall be obligated to submit the matter to binding arbitration in accordance with the procedures set forth in Section C.7 (subject to the limitations on the arbitrator's authority set forth in Section C.6.3 below) if the dispute concerns one or more of the following matters:

- C.6.2.1 a decision of WECC's Board of Directors or a Committee of the Board acting on the recommendation of, or on a matter within the jurisdiction of, the Operating Transfer Capability Policy Group ("OTCPG") or successor;
- C.6.2.2 a transmission path rating, or a modification to a transmission path rating, assigned to one or more transmission paths operated by a Member (or jointly operated by more than one Member);
- C.6.2.3 transmission access, pursuant to Sections 10.1.2, 10.1.3, and 10.5; or
- C.6.2.4 any matter that, by vote of both WECC's Board of Directors and WECC's Membership, is designated as a matter to be subject to the provisions of Section C.6.2 of these Bylaws, provided that any matter submitted to WECC's Membership pursuant to this provision must be approved by at least the number of votes required to amend these Bylaws under Section 13.2.

C.6.3 Limitations on Arbitrator's Authority with Respect to Matters Specified in Section C.6.2. Unless all of the parties to a dispute agree otherwise, an arbitrator rendering a decision with respect to any matter specified in Section C.6.2 above shall have no authority to consider or award remedies for past economic harm or damages of any kind, including without limitation actual or direct damages; indirect, consequential, or incidental damages; or exemplary or punitive damages. Nothing in this Section C.6.3 shall: (i) limit any rights that a party to a dispute concerning a matter specified in Section C.6.2 above may have to pursue legal claims for damages or other economic remedies after the arbitrator has rendered his or her decision on that matter (within the scope of his or her authority under this Section C.6.3); or (ii) limit an

arbitrator's authority under Section C.8 below to shift costs or impose monetary sanctions for "good cause" (as that term is defined in Section C.8).

C.6.4 Arbitration Decisions Not To Modify Underlying Rights and Obligations. Unless all of the parties to a dispute agree otherwise, the resolution through binding arbitration of any dispute governed by this Appendix C shall not have the effect of increasing, decreasing, or otherwise modifying WECC's or any Member's obligation to abide by, or ability to enforce or impose penalties or sanctions with respect to, any guidelines, criteria, standards, policies, procedures, decisions, or Bylaws of WECC or any limitation on the foregoing, whether established by law; regulation; judicial, executive, or administrative order, decree, or decision; tariff; contract; course of performance; treaty; or otherwise.

C.6.5 Laws Relating to Binding Arbitration. WECC and its Members recognize that some Members may be subject to laws (including without limitation United States federal or state laws, Canadian or provincial laws, or Mexican laws) that limit or define those Members' ability to agree in advance to be subject to binding arbitration. If a Member has the right or obligation under applicable law to refuse to submit to binding arbitration in connection with any dispute that would otherwise be subject to binding arbitration under Section C.6.2 of these Bylaws, that Member shall not be obligated to comply with the binding arbitration procedures set forth in Sections C.6 and C.7. Any Member subject to any law or other legally binding authority that may limit (or permit the Member to limit) its obligation to comply with the provisions requiring binding arbitration under Sections C.6 and C.7 or to fully comply with a valid arbitrator's decision rendered in accordance with this Appendix C shall provide

notice to this effect to all other disputing parties and WECC's Chief Executive Officer upon initiation of any dispute involving that Member if the dispute is subject to Section C.6.2. Upon receiving a notice under Section C.6.5, any other party to the dispute shall thereafter be relieved of any obligation to comply with the provisions Sections C.6 and C.7 in connection with that dispute, except to the extent that the Member giving notice agrees to be fully bound by procedures governing and results of any arbitration proceeding. If there are more than two parties to a dispute covered by the preceding sentence, however, then all parties to the dispute other than the party giving notice under Section C.6.5 shall make good faith efforts to establish a mutually acceptable approach for resolving among themselves whatever aspects of the dispute can reasonably be resolved through the procedures set forth in this Appendix C without the participation of the party giving notice under Section C.6.5. If any Member fails to submit to binding arbitration, or fails to abide by a valid arbitrator's decision rendered in accordance with this Appendix C, that Member shall thereafter have no right to enforce any of the provisions of Section C.6.2 (concerning obligations to submit specified disputes to binding arbitration) against any other Member or WECC until such time as the WECC Board of Directors, or a delegate designated by the Board, determines that it is appropriate to restore the Member's ability to enforce the provisions of Section C.6.2.

C.6.6 Consistency with Laws, Regulatory Jurisdiction and Orders, Etc. Nothing contained in this Appendix C and no arbitrator's decision rendered in accordance with Section C.7 shall be construed to require or shall otherwise operate to cause any Member or WECC to incur any obligation or take any action that is contrary to: (i) any

applicable law or regulation; (ii) any applicable authority, order, decree, rule, or decision of a regulatory, judicial, administrative, executive, or other governmental body having jurisdiction over one or more of the matters or parties subject to this Appendix C or covered by an arbitrator's decision; or (iii) any applicable rate schedule, tariff, treaty, or valid, pre-existing contractual obligation with which any party subject to this Appendix C or covered by an arbitrator's decision is legally obligated to comply.

C.7 Arbitration Procedures.

C.7.1 Notice to WECC of Initiation of Binding Arbitration. Within 10 calendar days after all of the parties to a dispute have agreed (or become obligated under Section C.6.2 above) to submit the dispute to binding arbitration under Sections C.6 and C.7, the parties to the dispute shall deliver written notice to WECC's Chief Executive Officer (an "Arbitration Notice").

C.7.1.1 The Arbitration Notice shall: (i) include a brief, general description of the issues to be arbitrated; and (ii) identify all parties who have agreed (or become obligated) to submit the dispute to binding arbitration under Sections C.6 and C.7.

C.7.1.2 Within five business days of receiving an Arbitration Notice, WECC's Chief Executive Officer shall: (a) publish (or cause to be published) in WECC's newsletter or on its electronic bulletin board a notice containing a list of the parties to the arbitration and the parties' brief, general description of the issues to be arbitrated; and (b) deliver to each party to the dispute a copy of

WECC's then-current standing list of qualified arbitrators, knowledgeable in matters addressed by WECC (as approved by the Board of Directors).

C.7.1.3 No person may be listed on WECC's standing list of qualified arbitrators unless the person has agreed to: (a) disclose, at any time the person is selected to serve as a arbitrator under this Appendix C, any personal or financial interest the arbitrator may have with respect to the matter(s) in dispute (including any indirect personal or financial interest that could arise because of interests or relationships affecting any of the arbitrator's immediate family members); (b) disclose any relationship the arbitrator may have with any party to the dispute that is not permitted under Section C.7.2 below; (c) assemble a complete record of the arbitration process and the materials received as evidence by the arbitrator if any of the parties to the dispute elect to appeal or contest the arbitrator's decision; and (d) abide by all applicable provisions of and procedures specified by Sections C.6 and C.7.

C.7.2 Selection of an Arbitrator. Within 10 calendar days after all of the parties to a dispute have agreed (or become obligated) to submit the dispute to binding arbitration under Sections C.6 and C.7, the parties to the dispute shall select an arbitrator by mutual agreement. If the parties cannot agree on an arbitrator within 10 calendar days after agreeing to arbitrate their dispute, the arbitrator shall be selected from WECC's standing list of qualified arbitrators as follows: The parties to the dispute shall take turns striking names from WECC's standing list of qualified arbitrators until there is only one name remaining. (The parties to the dispute shall draw lots to determine the order in which they take turns striking names.) The last

person whose name remains on the list shall serve as the arbitrator. No arbitrator other than an arbitrator chosen by agreement of all the parties to the dispute may (i) have a personal or financial interest in the matter(s) in dispute (including any indirect personal or financial interest that could arise because of interests or relationships affecting any of the arbitrator's immediate family members); or (ii) be (or have an immediate family member who is) a past or present director, commissioner, officer, employee, consultant, agent, or other representative of any of the parties to the dispute. If the arbitrator selected through the process of striking names specified above is disqualified under the preceding sentence, the arbitrator whose name was stricken last shall serve in his or her place.

C.7.3 Initial Statements and Proposed Arbitration Decisions. Within 10 calendar days after the selection of an arbitrator under Section C.7.2 above, each party to the dispute shall submit a statement in writing to all other parties to the dispute and to the arbitrator. Each disputing party's statement shall set forth in reasonable detail the nature of the dispute, the issues to be arbitrated, and the party's reasonable, good faith proposal for resolving the dispute. As provided in Section C.5.3 above, to the extent permitted by law, no party to an arbitration conducted under Sections C.6 and C.7 shall publicly disclose, rely on, or introduce as evidence in any arbitration, FERC proceeding, Canadian Regulatory Authority proceeding, proceeding before a Mexican Regulatory Authority, appeal, or litigation concerning the same or any related dispute any information required to be kept confidential by the terms of Section C.5.3.



C.7.4 Procedural Matters. The arbitrator shall determine discovery procedures, how evidence shall be taken, what written submittals may be made, and other such procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution. Each party to the dispute shall produce all evidence determined by the arbitrator to be relevant and material to the issues presented. If such evidence involves proprietary or confidential information, the party submitting the evidence shall petition the arbitrator for a protective order, and to the extent the arbitrator determines there is good cause the arbitrator shall issue an appropriate protective order and all parties to the dispute shall comply with the protective order. The arbitrator may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.

C.7.5 Out-of-Court Sworn Testimony. At the request of any disputing party, the arbitrator shall have the discretion to allow that party to examine witnesses through sworn out-of-court testimony (referred to in the United States as “deposition” and in Canada as “discovery”) to the extent the arbitrator deems the evidence sought to be relevant and appropriate. In general, out-of-court witness examinations shall be limited to a maximum of three per party and shall be held within 30 calendar days after the making of a request. Each witness examination shall be limited to a maximum of three hours’ duration. The arbitrator shall have the discretion to permit the number and duration of examination sessions allowed under this Section C.7.5 to be increased, and to extend the 30-day time limit, upon request for good cause shown.

All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information.

C.7.6 Intervention by Other Parties. Unless all of the parties to the dispute agree otherwise, no one (whether a Member, WECC, or any other entity or person) that is not a party to a dispute at the initiation of arbitration under Sections C.6 and C.7 shall have the right to intervene in the arbitration. Any party wishing to intervene in an arbitration under Sections C.6 and C.7 may petition the arbitrator for permission to intervene, provided that the petition is submitted to the arbitrator not more than 30 calendar days after notice of the arbitration is posted by WECC's Chief Executive Officer in accordance with Section C.7.1. The arbitrator shall have the discretion to permit a party to intervene if the arbitrator determines that the party petitioning to intervene has a direct and substantial interest in the outcome of the arbitration. In exercising his or her discretion concerning a requested intervention, the arbitrator shall also consider any additional complexity or delay that may be caused by allowing the intervention and also any other remedies available to the party requesting intervention. Any party that is granted the privilege of intervening in an arbitration under Sections C.6 and C.7 shall be permitted to intervene subject to the same terms, conditions, limitations, rights, and obligations of all other parties to the dispute, including without limitation the binding effect of arbitrator's decision, limitations on rights of appeal, the obligation to share equally in the costs of the arbitrator, and the obligation to be subject to the provisions of Section C.8.

C.7.7 Consideration of WECC Criteria, Etc. The Arbitrator shall give due consideration to the reliability criteria, standards, guidelines, policies, and procedures of WECC and

the North American Electric Reliability Council (or any successor organization) to the extent they are relevant to resolution of the matter(s) in dispute. If the arbitrator's decision will include interpretation of any of WECC's reliability criteria, standards, guidelines, policies, and procedures, (and WECC is not a party to the arbitration), the arbitrator shall, before rendering his or her decision, consult with WECC (subject to the provisions of Section C.7.10 below) concerning the interpretation of WECC's applicable reliability criteria, standards, guidelines, policies, and procedures.

C.7.8 Evidence and Rebuttal. The arbitrator shall consider all issues material to the matter(s) in dispute. The arbitrator shall take evidence submitted by the parties to the dispute in accordance with procedures established by the arbitrator and may request additional information the arbitrator deems material to the resolution of the dispute. With the consent of all parties to the dispute, the arbitrator's request for additional information may include the opinion of any individual or organization with recognized expertise in the matter(s) in dispute, subject to the following conditions: (i) any verbal communication with an expert consulted by the arbitrator must take place exclusively in the presence of all parties to the dispute and copies of any written communications must be provided to all parties to the dispute; (ii) any expert consulted by the arbitrator must agree to be equally available upon request to all of the parties to the dispute; (iii) any expert consulted by the arbitrator must agree to comply with the restrictions on disclosure contained in Section C.5.3; and (iv) all parties to the dispute shall be afforded a reasonable opportunity to question the expert and to rebut any additional information submitted by the expert at the request of the arbitrator.

C.7.9 Arbitrator's Decision. The arbitrator shall make all reasonable efforts to complete hearings (if applicable) and submissions of written evidence not more than 90 calendar days after receiving initial statements submitted under Section C.7.3 above. As soon as practicable, but in no event more than 30 calendar days after the completion of hearings and evidence submittals, the arbitrator shall render his or her final decision for resolving the dispute. By agreement of all of the parties to the dispute or at the discretion of the arbitrator for good cause, the foregoing deadline for delivery of the arbitrator's decision may be extended. The arbitrator's decision shall be based on the arbitrator's good faith determination of a resolution that will: (i) be consistent with any laws, rules, and regulations applicable to the matter(s) in dispute; (ii) be consistent with any valid pre-existing agreements among the parties to the dispute that bear on the matter(s) in dispute; (iii) not require any party to the dispute to take action that is not in compliance with any of WECC's reliability criteria, standards, guidelines, policies, and procedures; and (iv) best serve to promote or maintain reliable operation of the interconnected bulk power systems of the Western Interconnection, without imposing inequitable burdens or benefits on any of the parties to the dispute or others that may be affected by implementation of the arbitrator's decision. The arbitrator shall deliver to each of the parties to the dispute, along with his or her decision, a written statement including specific findings of fact, conclusions of law (if applicable), and an explanation of the arbitrator's basis for rendering his or her decision. Subject to any protective order that may have been issued under Section C.7.4 above, WECC's Chief Executive Officer shall publish (or cause to be published) in WECC's newsletter or electronic bulletin board a brief

summary of the arbitrator's decision. An arbitrator's decision that is not appealed shall not be deemed to be precedential in any other arbitration related to a different dispute.

C.7.10 WECC Staff Participation in Arbitration When WECC Not a Party. If, during the course of binding arbitration conducted under Sections C.6 and C.7 (in which WECC is not a party) the arbitrator or any party to the dispute wishes to solicit the views of WECC staff concerning the application, implementation, interpretation, or fulfillment of any guidelines, criteria, standards, policies, or procedures of WECC, the arbitrator may request or permit the submission of WECC staff views only with the consent of all of the parties to the dispute and only if: (i) any participation by WECC staff takes place exclusively in the presence of all parties to the dispute; (ii) participating WECC staff members agree to be equally available upon request to all parties to the dispute; and (iii) participating WECC staff members agree to comply with the restrictions on disclosure contained in Section C.5.3.

C.7.11 Compliance and Costs. Unless one or more of the parties to the dispute initiates and notifies all other parties to the dispute that it has initiated a process to contest or appeal the arbitrator's decision under Sections C.9 through C.13, upon the decision by the arbitrator, the parties to the dispute shall, within the time frame specified by the arbitrator, and, subject to Section C.6.6 above, take whatever action is required to comply with the arbitrator's decision to the extent the arbitrator's decision does not require regulatory action. To the extent the arbitrator's decision affects jurisdictional rates, terms and conditions of service, or facilities or otherwise requires local, state, federal, or provincial approval or regulatory action, or a FERC filing or a Canadian

Regulatory Authority filing by a Canadian Member or a Mexican Regulatory Authority filing by a Mexican Member, the affected Member (or WECC, if WECC is the party with the obligation to seek regulatory action) shall, within the time frame specified by the arbitrator, submit the arbitrator's decision or an appropriate filing to implement the arbitrator's decision and support the appropriate authority's acceptance or approval of the arbitrator's decision or implementation filing, except in cases where any party to the dispute has given notice of its intent to contest or appeal the arbitrator's decision. All costs associated with the arbitration (not including costs associated with attorney and expert witness fees incurred by the parties to the dispute) shall be divided equally among the parties to the dispute unless: (i) all of the parties to the dispute agree to an alternate method of allocating costs; or (ii) in rendering his or her decision, the arbitrator exercises his or her discretion under Section C.8 below to assess fees, costs, or other monetary sanctions against one or more of the parties to the dispute for good cause.

C.7.12 Entry of Judgment. At any time after an arbitrator has rendered his or her decision in an arbitration conducted under Sections C.6 and C.7 (provided that the time provided for initiating an appeal under Sections C.11.1 and C.12 below has expired and no appeal or other means of contesting the arbitrator's decision has been initiated), judgment on the decision rendered by the arbitrator may be entered by any court of competent jurisdiction (subject to the provisions of Sections C.6.3, C.6.4, and C.6.6 above). If the award is against the United States, a party to the arbitration may apply to the United States District Court for the district in which the principal office of the

applicable United States department or agency is located for an order confirming the award pursuant to 5 U.S.C. § 580.

C.8 Arbitrator's Discretion to Shift Costs or Impose Sanctions for Cause. Each party to any dispute submitted to arbitration under Sections C.6 and C.7 shall bear its own costs and fees associated with representation and participation in the arbitration process, and shall share equally in the arbitrator's fees except that the arbitrator shall have the discretion, to the extent permitted by law, to require one or more of the parties to the dispute to pay part or all of the costs and fees (including without limitation attorneys' and arbitrator's fees) of one or more other parties to the dispute, or to impose monetary sanctions on some other basis that is reasonable under the circumstances, for good cause. As used in this Section C.8, "good cause" means conduct involving serious abuse of or failure to comply with the dispute resolution process set forth in this Appendix C, willfully undertaken to harass or delay other parties to the dispute or to substantially impede the arbitrator's ability to render a decision consistent with the provisions set forth in Section C.7.9.

C.9 Rights to Appeal Arbitration Decisions. Except to the extent otherwise provided by applicable United States state or federal law, applicable Canadian or provincial law, or applicable Mexican law, a party to a dispute resolved by arbitration under Sections C.6 and C.7 may appeal or contest the arbitrator's decision only on one or more of the bases specified in Section C.9.1 below and only in accordance with the procedures set forth in Sections C.9.2 through C.13.

C.9.1 Grounds for Appealing Arbitration Decisions. A party to a dispute resolved by arbitration under Sections C.6 and C.7 may contest or appeal the arbitrator's decision only on the basis that: (i) the arbitrator's decision is contrary to applicable law or

regulation (including without limitation the FPA or FERC's then-applicable standards or policies, or comparable types of provisions that may apply under applicable Canadian, provincial, Mexican, or other laws and regulations); (ii) the arbitrator's decision is demonstrably arbitrary and capricious and without support in the record assembled during the arbitration; (iii) the arbitrator failed to afford one or more parties to the dispute an opportunity for a fair and meaningful hearing; (iv) the arbitrator engaged in serious misconduct in connection with the arbitration; (v) the arbitrator exceeded the authority conferred upon him or her under this Appendix C or as otherwise established by agreement of all the parties to the dispute; or (vi) the arbitrator's decision is contrary to the provisions of Section C.6.6.

C.9.2 Matter and One or More Parties to Dispute Subject to FERC Jurisdiction. If (i) the subject matter of a dispute arbitrated under Sections C.6 and C.7 is within the jurisdiction of FERC, and (ii) the conditions specified in Section C.12.1 or C.12.2 are satisfied, the rights of the parties to contest or appeal the arbitrator's decision shall be as set forth in Sections C.10 and C.12 below (subject also to the provisions of Section C.9.1 above). Notwithstanding the foregoing, nothing herein shall be construed or operate to require any Canadian or Mexican party or any other party that is not a "public utility" within the meaning of the FPA to make any filing with FERC under Sections 205 or 206 of the FPA.

C.9.3 All Parties and Matters in Dispute Subject to Jurisdiction of a Canadian Regulatory Authority. If all of the parties to an arbitrated dispute are subject to the jurisdiction of a particular Canadian Regulatory Authority, and if all matters in dispute are also subject to the jurisdiction of the same Canadian Regulatory Authority, any disputing



party may appeal an arbitrator's decision to that Canadian Regulatory Authority, where such Canadian Regulatory Authority has jurisdiction to hear the appeal, or to the appropriate Canadian court. Any appeal to a Canadian Regulatory Authority or Canadian court shall be subject to the provisions set forth in Sections C.10 and C.11 below.

- C.9.4 All Parties and the Matter in Dispute Subject to Jurisdiction of a Mexican Regulatory Authority. If all of the parties to an arbitrated dispute are subject to the jurisdiction of a particular Mexican Regulatory Authority, and if all matters in dispute are also subject to the jurisdiction of the same Mexican Regulatory Authority, any disputing party may appeal an arbitrator's decision to the appropriate Mexican Regulatory Authority, subject to the provisions set forth in Sections C.10 and C.11 below.
- C.9.5 Appeal to Court. If none of the preceding provisions concerning appealing or contesting an arbitrator's decision before FERC, a Canadian Regulatory Authority, or a Mexican Regulatory Authority apply to an arbitrated dispute, any party to an arbitrator's decision rendered in accordance with the provisions of Sections C.6 and C.7 may appeal the arbitrator's decision to a court of competent jurisdiction as provided under Section C.13 below.
- C.10 Appealing or Contesting Arbitrator's Decision to FERC or a Presiding Authority. Subject to the conditions specified in Sections C.9.1 through C.9.5 above, any disputing party may appeal or contest an arbitrator's decision to FERC or an appropriate Presiding Authority as follows:
- C.10.1 Record on Appeal. Except as otherwise provided in Section C.10.3 below, any appeal or action to contest an arbitrator's decision to FERC or a Presiding Authority

shall be based solely upon the record assembled by the arbitrator. All parties to arbitrations conducted under Sections C.6 and C.7 intend that: (i) the FERC or other Presiding Authority should afford substantial deference to the factual findings of the arbitrator; (ii) the portion, if any, of the arbitrator's decision relating to issues not of first impression (i.e., matters previously decided by the FERC or other Presiding Authority or a court of competent jurisdiction in cases involving comparable facts and circumstances) should be afforded appropriate deference by the FERC or other Presiding Authority; and (iii) the portion, if any, of the arbitrator's decision relating to issues of first impression should be afforded no deference by the FERC or other Presiding Authority.

C.10.2 No Expansion of Record on Appeal. Except as otherwise provided in Section C.10.3 below, no Member, non-Member, or WECC that has been a party to an arbitration under Sections C.6 and C.7 shall seek to expand the factual record before FERC or a Presiding Authority beyond that assembled by the arbitrator.

C.10.3 Exceptions to Limitations on Record on Appeal. If the arbitrator fails to assemble a complete record of the evidence submitted with respect to an arbitrated decision that is appealed pursuant to Sections C.9 through C.13, the parties to the appeal shall, notwithstanding the provisions of Sections C.10.1 and C.10.2 above, have the right to supplement the arbitrator's record before FERC or the Presiding Authority with any materials received into evidence by the arbitrator but omitted from the record assembled by the arbitrator. If an arbitrator's decision is appealed under Section C.9.1(iii) or (iv) above on the grounds that the arbitrator improperly excluded evidence so as to materially prejudice the outcome of the arbitration with respect to

one or more of the parties to the dispute, any party to the appeal may submit the evidence asserted to be improperly excluded, but only as a basis to request that FERC or the Presiding Authority vacate the arbitrator's decision and remand the matter to the arbitrator (or, if FERC or the Presiding Authority determines that the arbitrator engaged in serious misconduct, to a newly selected arbitrator) for reconsideration of the matter with inclusion of the improperly excluded evidence. If an arbitrator's decision is appealed under Section C.9.1(iv) above on the grounds of serious misconduct by the arbitrator, any party to the appeal may offer new evidence relating to the arbitrator's alleged misconduct.

C.11 Procedures for Appeals to Presiding Authority. If any party to an arbitration under Sections C.6 and C.7 desires to appeal an arbitrator's decision to an appropriate Presiding Authority, it shall provide written notice to that effect to all other parties to the arbitration, the arbitrator, and WECC's Chief Executive Officer within 14 calendar days following the date of the arbitrator's decision. If notice of appeal is timely provided:

C.11.1 Within 30 calendar days after the date of the appealing party's first notice of appeal, the party providing notice of appeal shall file its statement of position regarding the appeal with the Presiding Authority, together with the complete evidentiary record of the arbitration and a copy of the arbitrator's decision. The statement of position shall state that the appeal requested has been the subject of an arbitration pursuant to this Agreement.

C.11.2 Within 30 calendar days after the date of the appealing party's first notice of appeal, any other party that was a party to the arbitration may file its statement of position regarding the appeal with the Presiding Authority.

- C.11.3 Copies of all materials filed with the Presiding Authority by any party during the course of an appeal shall be delivered to all other parties to the arbitration and to WECC's Chief Executive Officer.
- C.11.4 Implementation of the arbitrator's decision shall be deemed stayed pending an appeal unless and until, at the request of a disputing party, the Presiding Authority issues an order shortening or extending the stay of implementation.
- C.11.5 WECC's Chief Executive Officer shall publish (or cause to be published) a summary of each appeal in WECC's newsletter or electronic bulletin board.
- C.11.6 The Members and WECC intend that any Presiding Authority's order resulting from an appeal under Sections C.9 and C.11 shall be subject to judicial review pursuant to laws governing the Presiding Authority and the matter in dispute that provide for judicial review of Presiding Authority action.
- C.12 Procedures for Contesting or Appealing Arbitrator's Decision Before FERC. If any party to a dispute arbitrated under Sections C.6 and C.7 elects, subject to the limitations set forth in Sections C.9.1 through C.9.5 above, to contest or appeal an arbitrator's decision before FERC, the party so electing shall provide written notice to that effect to all other parties to the arbitration, the arbitrator, and WECC's Chief Executive Officer within 14 calendar days following the date of the arbitrator's decision. The provisions contained in Sections C.10.1, C.10.2, and C.10.3 above shall apply with respect to the record of the arbitration submitted to FERC. In addition, the following provisions shall apply:
- C.12.1 FERC Filing by Prevailing Party. If the arbitrator's decision requires the prevailing party to take action that must have FERC approval or involves the provision of FERC-jurisdictional service by the prevailing party, the prevailing party shall file the

arbitrator's decision or make an appropriate filing with FERC to implement the arbitrator's decision. Provided that it has given notice as required under Section C.12 above, any non-prevailing party may contest the prevailing party's filing in accordance's with FERC's applicable rules and regulations.

C.12.2 Complaint to FERC by Prevailing Party. If the arbitrator's decision requires a non-prevailing party to take action that must have FERC approval or involves the provision of FERC-jurisdictional service by any non-prevailing party, then, if the non-prevailing party has given notice as required under Section C.12 above, the prevailing party may submit the arbitrator's decision to FERC in the form of a complaint.

C.13 Appeal to Court. If none of the provisions that govern appealing or contesting an arbitrator's decision before FERC, a Canadian Regulatory Authority, or a Mexican Regulatory Authority as set forth in Sections C.9.2, C.9.3, or C.9.4 above apply, any disputing party may appeal an arbitrator's decision to any court of competent jurisdiction, subject to the conditions specified in Section C.9.1 above. Except as otherwise provided in Section C.10.3 above (substituting the words "court of competent jurisdiction" for "FERC or the Presiding Authority"), any appeal to a court shall be based solely upon the record assembled by the arbitrator, and no Member, non-Member, or WECC who is a party to an arbitration under Sections C.6 and C.7 shall seek to expand the factual record before the court beyond that assembled by the arbitrator.

## **Appendix of Additional Definitions Relating to Alternative Dispute Resolution Provisions**

Arbitration Notice has the meaning specified in Section C.7.1 of these Bylaws.

Canadian Regulatory Authority. The agency or agencies established under the laws of Canada or the applicable Provinces of Canada and having jurisdiction over facilities, interconnections, transmission rates, charges, terms, and conditions of service of a Canadian Member.

Dispute Notice has the meaning specified in Section C.5.1 of these Bylaws.

FERC. The Federal Energy Regulatory Commission or a successor agency.

FPA. The Federal Power Act (16 U.S.C. §§ 824 *et. seq.*), as it may be amended from time to time.

Mexican Regulatory Authority. The agency or agencies established under the laws of Mexico or the applicable states of Mexico and having jurisdiction over facilities, interconnections, transmission rates, charges, terms, and conditions of service of a Mexican Member.

Presiding Authority. As used in Sections C.10 and C.11, the term “Presiding Authority” has the following meanings: with respect to an appeal to an appropriate Canadian Regulatory Authority, “Presiding Authority” means the presiding Canadian Regulatory Authority or Canadian court with jurisdiction to hear the appeal; and with respect to an appeal to an appropriate Mexican Regulatory Authority, “Presiding Authority” means the presiding Mexican Regulatory Authority or Mexican court with jurisdiction to hear the appeal.

# **EXHIBIT C**

## Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

### COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA [add reference to any applicable authorities in Canada and Mexico]. No regional reliability standard shall be effective within the Western Electricity Coordinating Council (“WECC”) area unless filed by NERC with FERC [and applicable authorities in Canada and Mexico] and approved by FERC [and applicable authorities in Canada and Mexico].

### COMMON ATTRIBUTE 2

WECC regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A WECC reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

### COMMON ATTRIBUTE 3

WECC regional reliability standards, when approved by FERC [add applicable authorities in Canada], shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the WECC area, regardless of membership in the region.

### COMMON ATTRIBUTE 4

**Requester** — The requester is the sponsor of the regional reliability standard request and may assist in the development of the standard. Any member of WECC, or group within WECC shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the WECC area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.



## **COMMON ATTRIBUTE 5**

**[Standards or other named] committee** — The WECC [standards] committee manages the standards development process. The [standards] committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the WECC board on standards presented for adoption.

## **COMMON ATTRIBUTE 6**

*[Alternative 6A: For a Regional Entity that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee is a balanced stakeholder committee, inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system. [The [standards] committee votes to approve standards.] See Appendix A for the representation model of the [standards] committee.

*[Alternative 6B: For a Regional Entity that chooses to vote using a balanced ballot body of stakeholders.]*

**[Registered ballot body]** — The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with WECC as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

## **COMMON ATTRIBUTE 7**

WECC will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the WECC and NERC websites.

## **COMMON ATTRIBUTE 8**

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

### **COMMON ATTRIBUTE 9**

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

### **COMMON ATTRIBUTE 10**

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

### **COMMON ATTRIBUTE 11**

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the WECC website within [no greater than 30] days of acceptance by the committee.

### **COMMON ATTRIBUTE 12**

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

### **COMMON ATTRIBUTE 13**

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the WECC website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process

manager shall provide notice to WECC stakeholders and other potentially interested entities, both within and outside of the WECC area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

#### **COMMON ATTRIBUTE 14**

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the WECC website no later than the next posting of the proposed standard.

#### **COMMON ATTRIBUTE 15**

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

#### **COMMON ATTRIBUTE 16**

The standards process manager shall schedule a vote by the WECC [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

#### **COMMON ATTRIBUTE 17**

[Alternative 17A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the WECC board. The [standards] committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

[Alternative 17B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

The WECC registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

#### **COMMON ATTRIBUTE 18**

[Alternative 18A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard.

*[Alternative 18B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]*

All members of WECC are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

### **COMMON ATTRIBUTE 19**

*[Alternative 19A: For an RE that chooses to vote using a balanced stakeholder committee.]*

Actions by the committee shall be recorded in the regular minutes of the committee.

*[Alternative 19B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]*

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

### **COMMON ATTRIBUTE 20**

Under no circumstances may the board substantively modify the proposed regional reliability standard.

### **COMMON ATTRIBUTE 21**

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada and Mexico.]

### **COMMON ATTRIBUTE 22**

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the WECC bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in WECC, and shall not be unreasonably restricted on the basis of technical qualifications or other such

requirements. Meetings of drafting teams shall be open to the WECC members and others.

### **COMMON ATTRIBUTE 23**

- **Balanced** - The WECC standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

### **COMMON ATTRIBUTE 24**

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the WECC area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

### **COMMON ATTRIBUTE 25**

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

### **COMMON ATTRIBUTE 26**

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

### **COMMON ATTRIBUTE 27**

- Does not unnecessarily delay development of the proposed reliability standard.

### **COMMON ATTRIBUTE 28**

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

**COMMON ATTRIBUTE 29**

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC’s market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

**COMMON ATTRIBUTE 30**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

**COMMON ATTRIBUTE 31**

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

**COMMON ATTRIBUTE 32**

<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.  If not applicable to the entire WECC area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
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**COMMON ATTRIBUTE 33**

<b>Measure(s)</b>	Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure
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	<p>shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
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**COMMON ATTRIBUTE 34**

<p><b>Compliance Monitoring Process</b></p>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> <li>• Violation severity levels.</li> </ul>
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# **PROCESS FOR DEVELOPING AND APPROVING WECC STANDARDS**

## **Introduction**

This document explains the WECC process for requesting, announcing, developing, revising, withdrawing and approving WECC Standards as defined below (“WECC Standards Process”). The process involves several steps:

- A request to develop a new Standard or revise an existing Standard
- Decision to proceed with development or revision of a Standard and assignment to a Standing Committee and Subgroup
- Public (including members) notification of intent to develop or revise a Standard
- Drafting stage
- Posting of draft for public comment
- Review of all comments and public posting of decisions reached on each comment
- WECC Standing Committee/Participating Stakeholder balloting of proposed Standard
- Consideration of any appeals
- WECC Board of Directors (Board) decision regarding approval, disapproval or remand of proposed Standard
- Forwarding proposed WECC Reliability Standards to ERO

The process for developing and approving WECC Standards includes:

1. Notification of pending Standard change before a wide audience of all “interested and affected parties”
2. Posting Standard change drafts for all parties to review
3. Provision for gathering and posting comments from all parties
4. Provision for an appeals process – both “due process” and “technical” appeals

WECC Standing Committees have the responsibility for developing and balloting WECC Standards. Standing Committee chairs are responsible for ensuring administration of the process and completion of all Standing Committee responsibilities. Standing Committees are assisted by a Standards Request Routing Committee and supported by Subgroups that draft the Standards, ensure the draft Standard is properly reviewed consistent with WECC due process requirements, respond to comments on the draft Standard, and revise the draft Standard in response to these comments. Board approval signifies that WECC has adopted the Standard. WECC staff has the role of tracking the Standard as it moves through the process and facilitating resolution of issues. In accordance with Section 8.6 of the WECC Bylaws, interested stakeholders may participate in Reliability Standard development and vote at the Standing Committee level on Reliability Standards or revisions to Reliability Standards.

## **WECC Bylaws Controlling**

It is the intention of the drafters of the WECC Standards Process that the procedures described herein be interpreted and applied in a manner that is consistent with the WECC Bylaws. Should any conflict between this WECC Standards Process and the WECC Bylaws arise, the WECC Bylaws will control.



## Terms

**Days.** All references to days in this document refer to calendar days.

**Due Process Appeals Committee.** The committee that receives all appeals alleging that WECC's due process procedure was not properly followed during the development or revision of a Standard. The Due Process Appeals Committee consists of three Directors appointed by the Board Chair. The WECC Chief Executive Officer or his/her designee will be the staff coordinator for the Due Process Appeals Committee.

**Participating Stakeholder.** A Participating Stakeholder as defined in Section 3.21 of the WECC Bylaws.

**Standard.** In the context of this document, the term Standard refers to a Reliability Standard or a commercial Business Practice.

**Standard Request Form.** The form titled WECC Standards/Business Practice Request Form approved by WECC for the purpose of requesting a new Standard or a revision to an existing Standard.

**Standards Request Routing Committee.** This committee consists of the chairs of the three Standing Committees or their designees. This Committee is responsible for determining if a Standard Request is within the scope of WECC's activities, and assigning the request to the appropriate Standing Committee(s).

**Standing Committee.** The Market Interface Committee (MIC), Operating Committee (OC) or Planning Coordination Committee (PCC).<sup>1</sup> MIC, OC, and PCC will coordinate their responsibilities for those Standards that have a combination of market, operating, and planning implications.

**Subgroup.** A subcommittee, work group, or task force of the MIC, OC, PCC, or a combination of representatives from these committees that is responsible for developing a draft WECC Standard, posting it for review, and addressing public comments on the draft.<sup>2</sup> Voting members of a Subgroup are the individuals appointed to the group. In addition, one representative of the entity requesting a Standard has the option of joining the Subgroup as a voting member.

**Technical Appeals Committee.** The committee that receives appeals alleging that a party's technical comments were not properly addressed during the development of a Standard. The Technical Appeals Committee consists of the Vice Chairs of the Market Interface Committee, Operating Committee, Planning Coordination Committee, and a Director appointed by the Board Chair. The WECC Chief Executive Officer or his/her designee will be the staff coordinator for the Technical Appeals Committee. The Director appointed to the committee will act as chair. Replacement of a Technical Appeals Committee member in the event of a conflict of interest will be at the discretion of the Technical Appeals Committee Chair. If the

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<sup>1</sup> In accordance with WECC Bylaws Section 8.5.4, Membership in WECC's Standing Committees is open to all WECC members.

<sup>2</sup> Formation of Subgroups is in accordance with the Market Interface Committee's, Planning Coordination Committee's, and Operating Committee's Organizational Guidelines.

chair has a conflict of interest, the WECC Board Chair will appoint another Director to serve as chair for the duration of the appeal in question.

## **Normal Process for Standards**

### **Step 1 – Request To Revise or Develop a Standard**

Requests to develop or revise a Standard will be submitted to the WECC staff through the use of the WECC Standard Request Form. Requesters may be any individual or organization. WECC membership is not a requirement as long as the requester has an interest in electric system reliability or commercial business practices in the Western Interconnection.

### **Step 2 – Request Validation and Routing**

The Standard Request Form will be reviewed for completeness and assigned a tracking number by the WECC staff. Staff may assist with completing the request, or report to the Standards Request Routing Committee that the request is incomplete and request guidance. When complete, the WECC staff will forward the request to the Standards Request Routing Committee. This committee will confer either in person or via conference call within two weeks of receipt of a completed request to determine whether the request is within WECC's scope.

The WECC staff will maintain a web-based form that tracks all requests through the standard development process, as well as a standards development tracking log that is posted on the WECC website.

Upon ascertaining that a request is within the scope of WECC's activities, the Standards Request Routing Committee will assign the request to the chair of the appropriate Standing Committee(s), who will in turn assign it to a Subgroup. One Standing Committee will be designated as the lead Standing Committee. If the request has implications for any combination of planning, operations, or market issues, the chair of the lead Standing Committee, in consultation with the Standards Request Routing Committee, will evaluate the technical expertise of the Subgroup and may augment membership in the Subgroup for the purpose of drafting the proposed Standard or revision(s) to ensure that the Subgroup includes a composite of individuals having the appropriate planning, operations, and market expertise. Notification of such assignments will be posted on the WECC website and sent to all parties that subscribe to the WECC standards e-mail list. In addition, such assignments will be simultaneously noticed to NERC. The Subgroup will act in accordance with duly approved Subgroup guidelines. Any other interested parties may participate in the deliberations of the Subgroup.

### **Step 3 – Subgroup Begins Drafting Phase and Announces on WECC Web Site**

The Subgroup will begin working on the request at the Subgroup's next scheduled meeting, or no later than a designated number of days following assignment from the Routing Committee, as directed by the lead Standing Committee chair. Notification of Subgroup meetings will be posted on the WECC website and sent to all parties that subscribe to the WECC standards e-mail list at least 30 days prior to the meeting. In addition notification of all Subgroup meetings will be simultaneously noticed to NERC. These meetings will be open to interested stakeholders. The Subgroup chair will facilitate interested stakeholder participation in the

discussion in order to encourage Subgroup understanding of the issues and consensus among the meeting participants. The Subgroup will work to achieve a consensus recommendation.

Standard requesters have the right, and are encouraged to participate in the Subgroup drafting process. Requesters may be called on to provide additional information, supporting studies, and other information to support the requirements of the proposed Standard or revision(s).

All WECC Standards will follow a standard format that refers to the Responsible Entities included in the NERC Functional Model and includes compliance measures according to the WECC standard template. The drafting group will include definitions for any terms included in the Standard or revision(s) that need to be added to the WECC glossary.

In the course of its review, the Subgroup:

- will review the preliminary technical assessment provided by the requester.
- will compare with existing standards to determine whether a the request is better served by drafting a new standard or modifying an existing standard.
- may perform or request additional technical studies, if necessary.
- will complete an impact assessment report as part of its evaluation to assess the potential effects of the request.
- may request from the Board or Standing Committee additional time to study the proposed request if the Subgroup believes it necessary to fully assess the proposed change.

Upon reaching a determination, by majority vote, that the requested Standard or revision to an existing Standard is needed, the Subgroup will announce the proposed Standard or proposed revision(s) in an existing Standard by posting on the WECC website a summary of the Standard or revision(s) it expects to draft, and an explanation as to why the new Standard or revision(s) in an existing Standard is needed. Notice of this posting, and its location on the WECC website, will be sent to all parties that subscribe to the WECC standards e-mail list. In addition these notifications will be simultaneously noticed to NERC.

If the Subgroup determines, by majority vote, that a new or revised Standard is not needed, it will prepare an explanation in consultation with the Standards Request Routing Committee and post it on the WECC website for a specified comment period. The party that submitted the request, parties subscribing to the WECC standards email list, the Standing Committees, and Board will all be notified of the posting and its location on the WECC website.

#### **Step 4 – Draft Standard Posted for Comment**

The Subgroup will post the first draft of the new or revised Standard on the WECC website and provide 45 days for comments. Along with the draft, the Subgroup will prepare and post an impact assessment report. Alternatively, the Subgroup may request input from affected parties regarding their estimated cost to implement the draft Standard and will use that data to prepare an impact assessment report, which will be posted for comment when it becomes available. The draft will include all mandatory requirements. In addition, it will include measurements, Violation Risk Factors, and Violation Severity Levels. Notice of this posting and a solicitation for comments on the draft will be sent to all WECC members and all individuals who subscribe to the WECC standards e-mail list. In addition the notification of posting and solicitation for

comments will be simultaneously noticed to NERC. Members of electric industry organizations may respond through their organizations, or directly, or both. All comments will be supplied electronically and will be posted on the WECC website.

### **Step 5 – Subgroup Deliberates on Comments**

Subgroup chairs are responsible for ensuring that comments are addressed in a timely manner. The Subgroup will post its response to comments on the WECC website within 30 days of the close of the comment period. All parties that submit comments are strongly encouraged to participate in Subgroup deliberations.

If the Subgroup determines, by majority vote, any technical comments including those on the draft or the impact assessment report are significant, it will repeat Steps 3 and 4 as many times as considered necessary by the Subgroup to ensure adequate opportunity for interested stakeholder input. All interested stakeholders are strongly encouraged to submit their comments as early in the process as possible. The number of days for comment on each subsequent revision to the draft of the proposed Standard or revision(s) will be 30 days. Parties whose comments have been rejected by a Subgroup may request review of such comments by the Standing Committee and Participating Stakeholders when the proposed Standard or revision(s) is brought before the Standing Committee for a vote (in Step 7).

The Subgroup will attempt to achieve a consensus recommendation on a final draft. A majority vote of the Subgroup is required to approve submitting the recommended Standard or revision(s) to the Standing Committee and Participating Stakeholders. Voting will be conducted in accordance with this WECC Standards Process, the WECC Bylaws, and any other applicable regulatory requirements. Balloting results will be documented. All dissenting voters, as well as others participating in the Subgroup deliberations, will be encouraged to provide dissenting comments and, if possible, specific language that would make the Standard acceptable. If the Subgroup vote fails to capture a simple majority to approve the submittal to the Standing Committee and Participating Stakeholders, and there is no apparent way to reach a majority agreement, the Subgroup will report to and seek guidance from the Standing Committee Chair.

### **Step 6 – Subgroup Submits Draft for Standing Committee/Participating Stakeholder Vote**

The Subgroup's final draft Standard or revision(s) will be posted on the WECC website and the appropriate Standing Committees and Participating Stakeholders will be notified of the Subgroup's recommendation. The posting will include the final Subgroup vote, all comments that were not incorporated into the draft Standard, the impact assessment report and the date on which the Standing Committee and Participating Stakeholders are scheduled to vote on the Subgroup's recommendation. Notice of the posting will be sent to the Standing Committees, all Participating Stakeholders, and the standards e-mail list. In addition the notification of posting for ballot will be simultaneously noticed to NERC.

### **Step 7 – Standing Committee/Participating Stakeholders Vote on Recommendation to Board**

In accordance with Sections 8.5 and 8.6 of the WECC Bylaws, the Standing Committee and Participating Stakeholders will vote on the draft Standard, revision(s) or withdrawal no later than

at the next Standing Committee meeting, subject to applicable notice requirements. A minimum of 30 days notice will be provided prior to all Standing Committee meetings at which new or revised Standards will be considered for approval.<sup>3</sup> Notification of such meetings will be posted on the WECC website and sent to all parties that subscribe to the WECC standards e-mail list. Whenever it determines that a matter requires an urgent decision, the Board may shorten the time period set forth in this section in accordance with the requirements in the WECC Bylaws.<sup>4</sup>

The Standing Committee and Participating Stakeholders may vote to amend or modify a proposed Standard or revision(s) or remand it back to the Subgroup to propose needed modifications. The reasons for the modification(s) will be documented, posted, and provided to the Board. If any changes are made at the Standing Committee meeting, the roll call of votes for and against the proposal and abstentions will be recorded at the meeting, and the revised proposal will be posted for 10 days for comments.<sup>3</sup> The comments will be posted and distributed to the Standing Committee and Participating Stakeholders. All Standing Committee members and Participating Stakeholders, including those who did not vote at the meeting, will be allowed 10 days from the time comments are posted to submit or change their votes, and the Standing Committee/Participating Stakeholder votes will be recounted based on these new and revised votes to determine whether a majority has voted for the proposal. Any parties that object to the modifications may appeal to the appropriate appeals committee as provided in Step 8.

A majority vote of the Standing Committee and Participating Stakeholders, as specified in Section 8.5.5.2 of the WECC Bylaws, is required to approve submitting the recommended Standard or revision(s) to the Board for a vote. In accordance with Section 8.5.5.2 only Standing Committee members and Participating Stakeholders who are present at a meeting of the Standing Committee may vote on a Standard.

Although any of the three Standing Committees (together with Participating Stakeholders) may vote on submitting the recommended Standard or revision(s) to the Board, only the vote of the lead Standing Committee and Participating Stakeholders will determine the course of action. If the Standing Committees do not agree, the lead Standing Committee and Participating Stakeholders will decide whether to return the draft to the Subgroup for further work, to submit the recommended Standard or revision(s) to the Board, or terminate the Standard development activity with the posting of an appropriate notice to the Standards requester, the Subgroup, and the Board (if appropriate). The Standing Committee chairs will coordinate input from their respective Committees and Participating Stakeholders to the lead Standing Committee so that the lead Standing Committee and Participating Stakeholders will have all relevant information when voting. Relevant voting information from all Standing Committees will be submitted to the Board for its consideration in determining whether or not to approve the Standard.

If the Standing Committee and Participating Stakeholders approve the Standard or revision(s), the Standing Committee sends its recommendation, together with the proposed Standard or revision(s), and any comments on which the Standing Committee and Participating Stakeholders

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<sup>3</sup> WECC Bylaws, Section 8.5.6 – “If the committee’s recommendation or decision changes significantly as a result of comment received, the committee will post the revised recommendation or decision on the Web site, provide e-mail notification to Members and Participating Stakeholders (if the recommendation or decision concerns a Reliability Standard or revision), and provide no less than ten (10) days for additional comment before reaching its final recommendation or decision.”

did not agree, plus minority opinions, to the Board for final approval. To be considered by the Board, any “no” votes on a proposed Standard or revision(s) should be accompanied by a text explaining the “no” vote and if possible specific language that would make the Standard or revision(s) acceptable. Proposed Standards or revision(s) will be posted no less than 30 days prior to the Board vote.<sup>4</sup> The date of the expected Board vote will also be posted.

### **Step 8 – Appeals Process**

Appeals are available at various levels of the Standards Development Process as follows:

Rejection of a Standards Request by the Standards Request Routing Committee may be appealed to a Standing Committee and Participating Stakeholders, and if necessary, to either a Due Process or Technical Appeal Committee, as appropriate.

Appeals of Subgroup decisions, including Routing Committee decisions, may be made to a Standing Committee and Participating Stakeholders. The Standing Committee will post its findings. The subsequent rejection of such an appeal by a Standing Committee and Participating Stakeholders may be further appealed to an appeals committee. The appeals committee will post and submit its findings and recommendations to the Standing Committee chair who will determine the appropriate course of action. Any submittal to the Board of Directors for approval will include any findings and recommendations of the appeals committee.

A new Standard or revision(s) to an existing Standard recommended by a Standing Committee and Participating Stakeholders may be appealed on either technical or due process grounds. Any due process or technical appeals must be submitted, in writing, to the WECC staff within 15 days of the date the Standing Committee posts a recommendation.

The WECC staff will conduct an investigation and issue a written report of its findings and recommendations to the appealing party and Standing Committee. If the appealing party does not agree with the staff report, it can request that the appeal be referred to the Technical or Due Process Appeals Committee, which will conduct an investigation and issue a report including findings and recommendations. The Technical Appeals Committee will make assignments as necessary to existing WECC technical work groups and task forces, form new technical groups if necessary, and use other technical resources as required to address technical appeals. The appealing party has the burden of proof and must demonstrate that the decision will adversely impact it. The Technical or Due Process Appeals Committee will issue a majority decision.

Each level of appeal will be completed within 30 days. The Board of Directors, at its discretion, may implement the Standard or revision(s) on an interim or emergency basis during the appeals process using the Urgent Action interim Standard Process set forth below.

### **Step 9 – Board Approval**

The WECC Board of Directors will consider the proposed Standard or revision(s) no later than at its next meeting occurring at least 30 days after the lead Standing Committee vote. The Board will consider the Standing Committee’s recommendations and minority opinions, all comments

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<sup>4</sup> WECC Bylaws, Section 7.5.1 – “Except as set forth in Section 7.5.2 regarding urgent business, all regular business of the Board will occur at the Board meetings, at least twenty-one (21) days’ advance notice of which has been provided...”

that were not incorporated into the draft Standard or revision(s), the impact assessment report, and inputs from the Due Process and Technical Appeals Committees. The Board will not amend or modify a proposed Standard, except to make nonmaterial changes to the language of a Standard or revision thereto. If approved, the Standard will be posted on the WECC website and all parties notified.

If the new or modified Standard is not approved, the Board may return the Standard to the Standing Committee and Participating Stakeholders for further work, or the Board may terminate the Standard activity with an appropriate notice and explanation to the Standard requester, Standing Committee, and Participating Stakeholders. These Board actions will also be posted.

A majority vote of the Directors present at a Board meeting, as specified in Section 7.2 of the WECC Bylaws, is required to approve the recommended Standard or revision(s).

### **Step 10 – ERO Review, FERC Approval and Implementation of Reliability Standards**

To the extent required under Section 215 of the Federal Power Act, 18 C.F.R. Part 39, and according to procedures established in the delegation agreement between WECC and the Electric Reliability Organization (“ERO”), the Board shall submit new Reliability Standards and revisions to existing Reliability Standards for review by the ERO and approval by FERC. Upon approval by FERC, the Reliability Standards will be made part of the body of NERC reliability standards and enforced upon all applicable bulk power system owners, operators, and users within the WECC region. Parties’ right to participate in the ERO and FERC review processes shall be as established in the applicable regulations and the ERO/WECC delegation agreement. Reliability Standards subject to ERO review shall become effective as approved by FERC or applicable Canadian or Mexican authorities.

### **Step 11 – Implementation of Standards Not Subject to ERO/FERC/Other Approval**

All new and modified Standards not subject to ERO review and FERC, Canadian or Mexican approval as provided in Step 10 shall become effective as ordered by the WECC Board. As of the effective date of such new or modified Standard, all industry participants in the Western Interconnection that such Standard is applicable to are expected to implement and abide by the Standard. Any and all parties to this Process retain the right of appeal to other authorities as the law allows.

### **Expedited Process for Urgent Action Interim Standards**

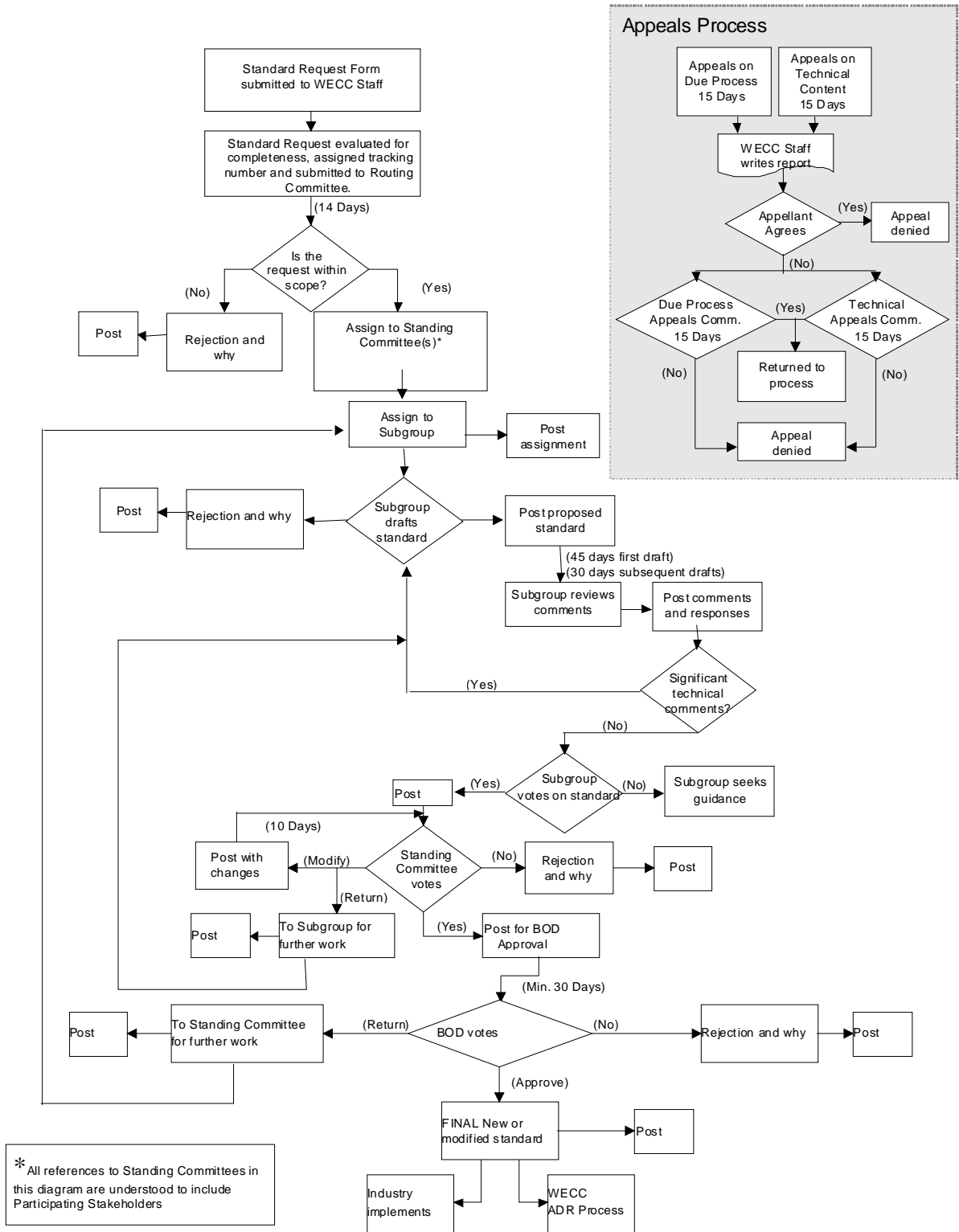
In cases requiring urgent action, such as in the development of emergency operating procedures, the Standing Committees and Participating Stakeholders may propose a new or modified interim Standard for approval by the WECC Board through a process that eliminates any or all of the steps outlined above, but only to the extent necessary, and only in a manner that is consistent with the WECC Bylaws. Such interim Standard shall be replaced by a Board-approved permanent Standard, developed using all the steps identified in this document within one year (or such additional time as may reasonably be required to complete all steps) from the date on which the WECC Board approved the interim standard. An interim Standard may be converted to a successor permanent Standard as long as any procedural steps bypassed in developing the interim Standard are completed with respect to the permanent Standard. If necessary, the Board

may renew an interim Standard to allow additional time for the development of a successor permanent Standard. Renewal may occur more than once, but a good faith effort must be made to develop a successor permanent Standard.

Approved by the WECC Board [Month, Day] 2008



# Process for Developing and Approving WECC Standards



# **EXHIBIT D**

**Compliance Monitoring and Enforcement Program**

**Western Electricity Coordinating Council**

**Compliance Monitoring and Enforcement Program**

**[Month, Day] 2009**

[Month, Day] 2009

# Compliance Monitoring and Enforcement Program

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## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1** Alleged Violation: A potential violation that the Compliance Enforcement Authority has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.
- 1.1.7** Compliance Enforcement Authority: NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.9** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by a Regional Entity or NERC and

## Compliance Monitoring and Enforcement Program

will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

- 1.1.10 Exception Reporting:** Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that violations of a Reliability Standard have occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11 Mitigation Plan:** An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is usually required whenever a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, Settlement Agreement, or otherwise.
- 1.1.12 NERC Compliance Registry:** A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13 NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan:** The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14 Periodic Data Submittals:** Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15 Regional Compliance Registry:** A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC Statement of Compliance Registry Criteria of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within a Regional Entity's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16 Regional Implementation Plan:** An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance

## Compliance Monitoring and Enforcement Program

with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, that identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.

- 1.1.17** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.18** Remedial Action Directive: An action (other than a penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.19** Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.20** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the Compliance Enforcement Authority and that are included for monitoring in the Regional Implementation Plan.
- 1.1.21** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.
- 1.1.22** Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. Spot Checking may require an on-site review to complete.



## **Compliance Monitoring and Enforcement Program**

### **2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS**

The Compliance Enforcement Authority shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. The Compliance Enforcement Authority shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within the Compliance Enforcement Authority's area of responsibility. Each Registered Entity shall inform the Compliance Enforcement Authority promptly of changes to its Registration information. The Compliance Enforcement Authority shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The Compliance Enforcement Authority shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The Compliance Enforcement Authority will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The Compliance Enforcement Authority will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

Each Regional Entity shall develop, maintain, and provide to NERC a Regional Compliance Registry with updates as changes occur. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and any other Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard.

## Compliance Monitoring and Enforcement Program

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The Compliance Enforcement Authority will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in sections 3.1 through 3.8 below.

Enforcement actions taken by the Compliance Enforcement Authority through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

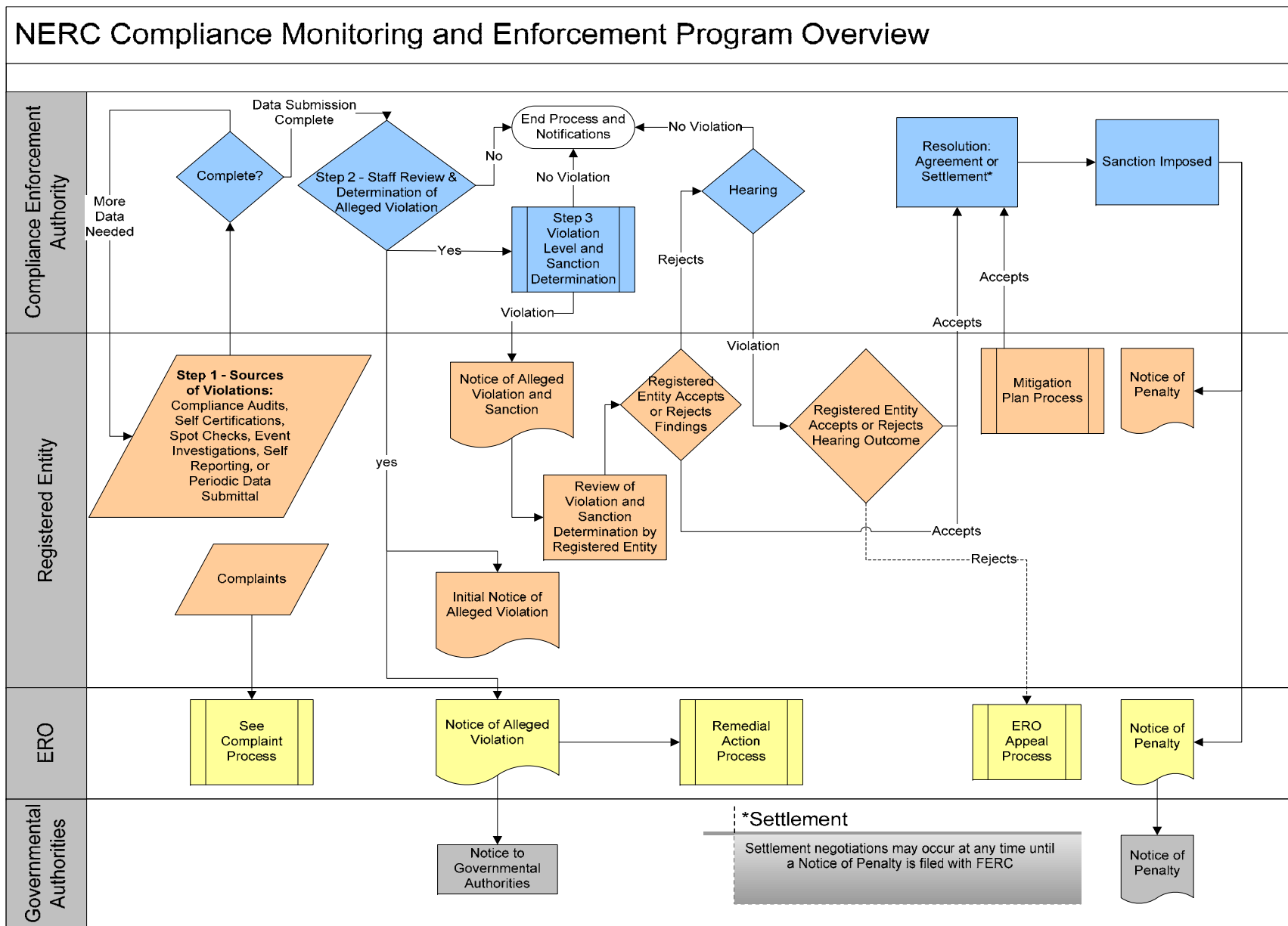
The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (i.e., hearing process) shown on this diagram.

# Compliance Monitoring and Enforcement Program



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:<sup>1</sup>

- The Compliance Enforcement Authority distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, the Compliance Enforcement Authority informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the Regional Entity provides the audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the audit. The audit team follows NERC audit guidelines in the implementation of the audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an audit report, including an

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<sup>1</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

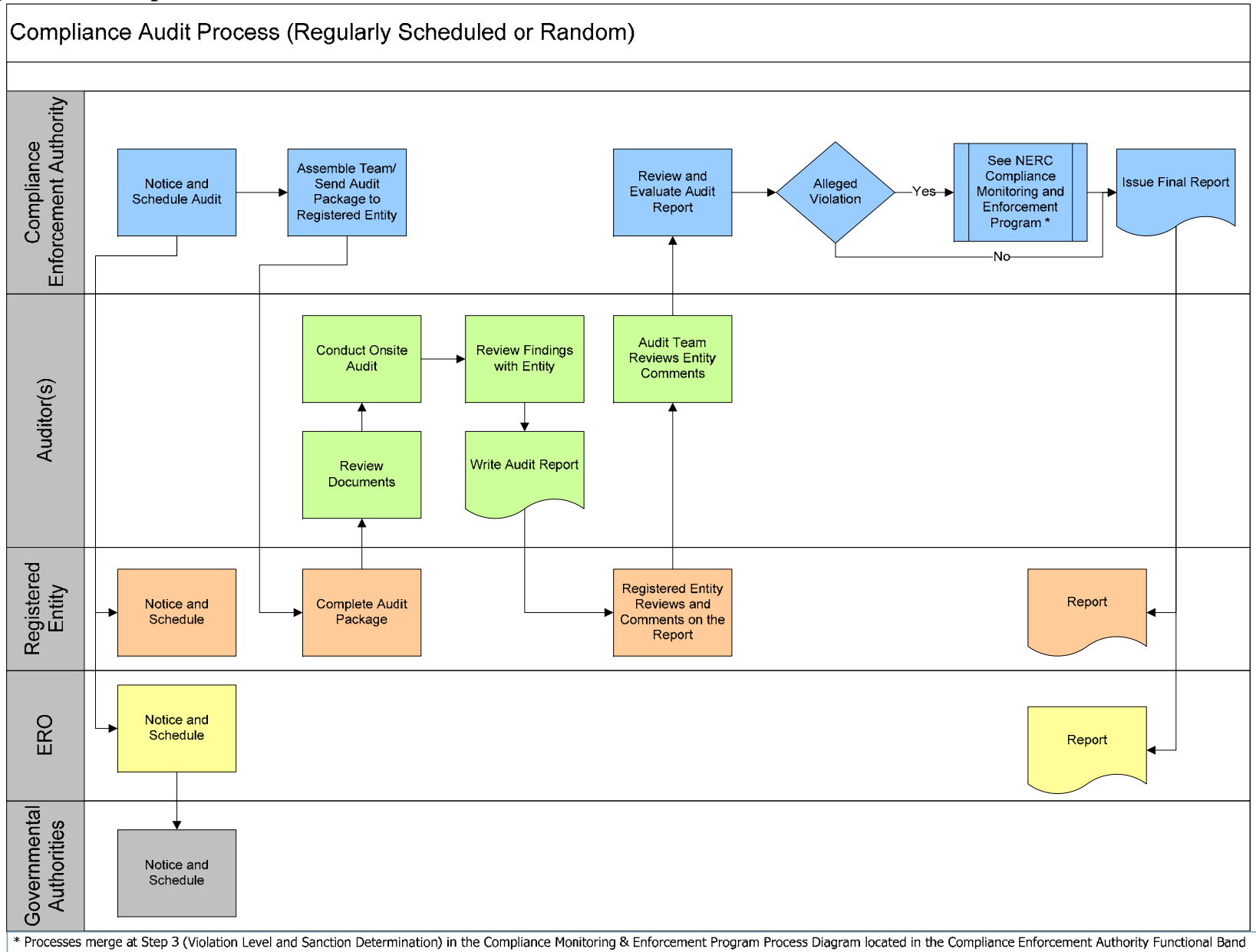
## Compliance Monitoring and Enforcement Program

assessment of compliance with the Reliability Standards to the Compliance Enforcement Authority.

- The Compliance Enforcement Authority reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

**Figure 3.1 – Compliance Audit Process**



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule**

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

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

### **3.1.3 Frequency of Compliance Audits**

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the Compliance Enforcement Authority if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the Compliance Enforcement Authority or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated, the Compliance Enforcement Authority shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### **3.1.4 Scope of Compliance Audits**

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### **3.1.5 Conduct of Compliance Audits**

The audit team shall be comprised of staff personnel from the Compliance Enforcement Authority and may include contractors and industry volunteers as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient audit team. The audit team

## **Compliance Monitoring and Enforcement Program**

leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any Regional Entity Compliance Audit team either as an observer or as an audit team member as determined by the Regional Entity. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit. The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

### **3.1.6 Compliance Audit Reports**

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains



## **Compliance Monitoring and Enforcement Program**

recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. Regional Entities will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or the Compliance Enforcement Authority until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the Compliance Enforcement Authority pursuant to the provisions of Section 5.0.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### **3.2 Self-Certification**

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check, will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

#### **3.2.1 Self-Certification Process Steps**

## Compliance Monitoring and Enforcement Program

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**:<sup>2</sup>

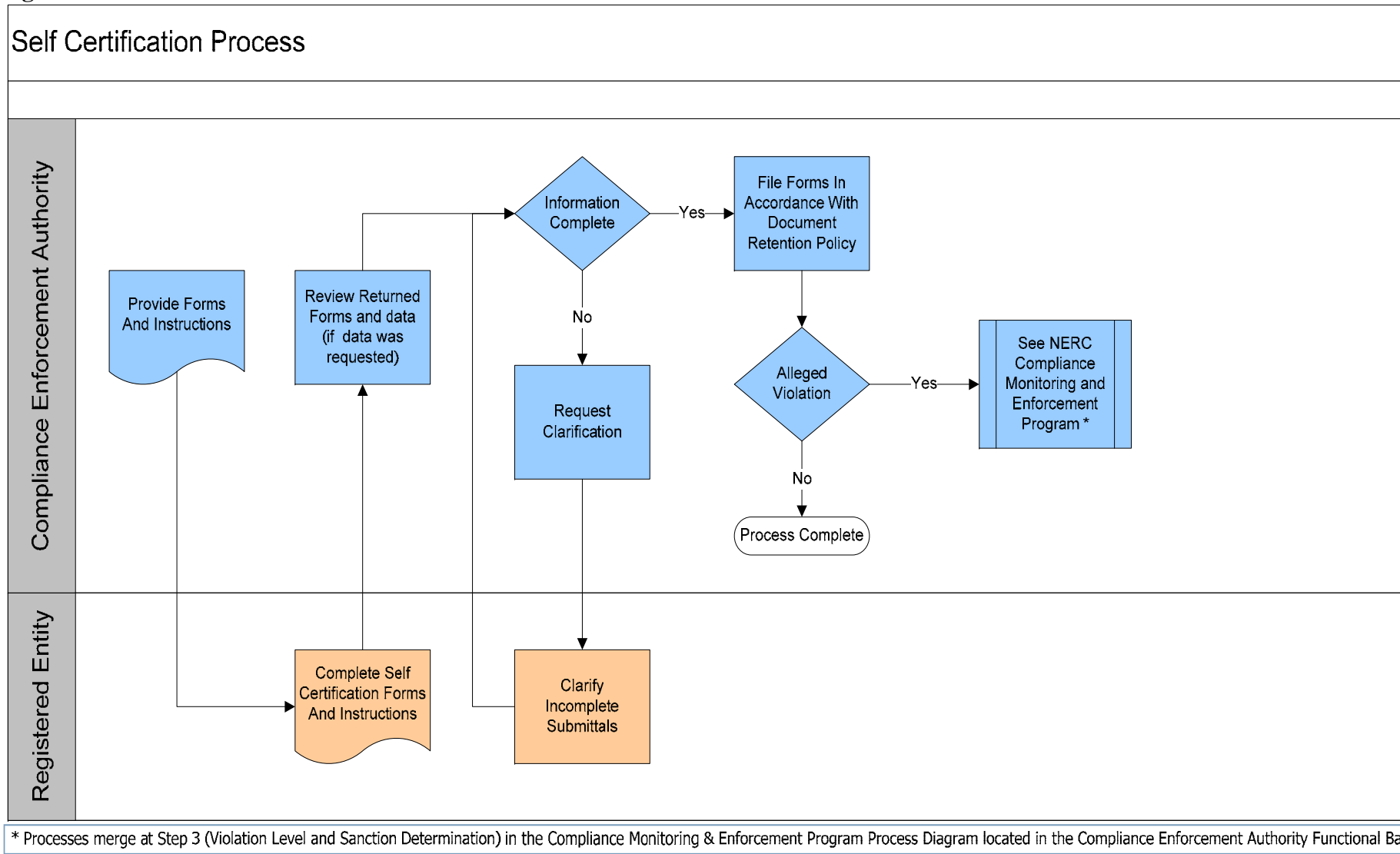
- The Compliance Enforcement Authority posts and updates the reporting schedule and informs Registered Entities. The Compliance Enforcement Authority ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>2</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by the Compliance Enforcement Authority. Spot Checking may be initiated by the Compliance Enforcement Authority at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The Compliance Enforcement Authority then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. A Compliance Audit may be initiated by the Compliance Enforcement Authority as a result of a Spot Check as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>3</sup>

- The Compliance Enforcement Authority notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the information to be submitted or available for review.
- The Compliance Enforcement Authority, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by the Compliance Enforcement Authority is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking Team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the Compliance Enforcement Authority in the format specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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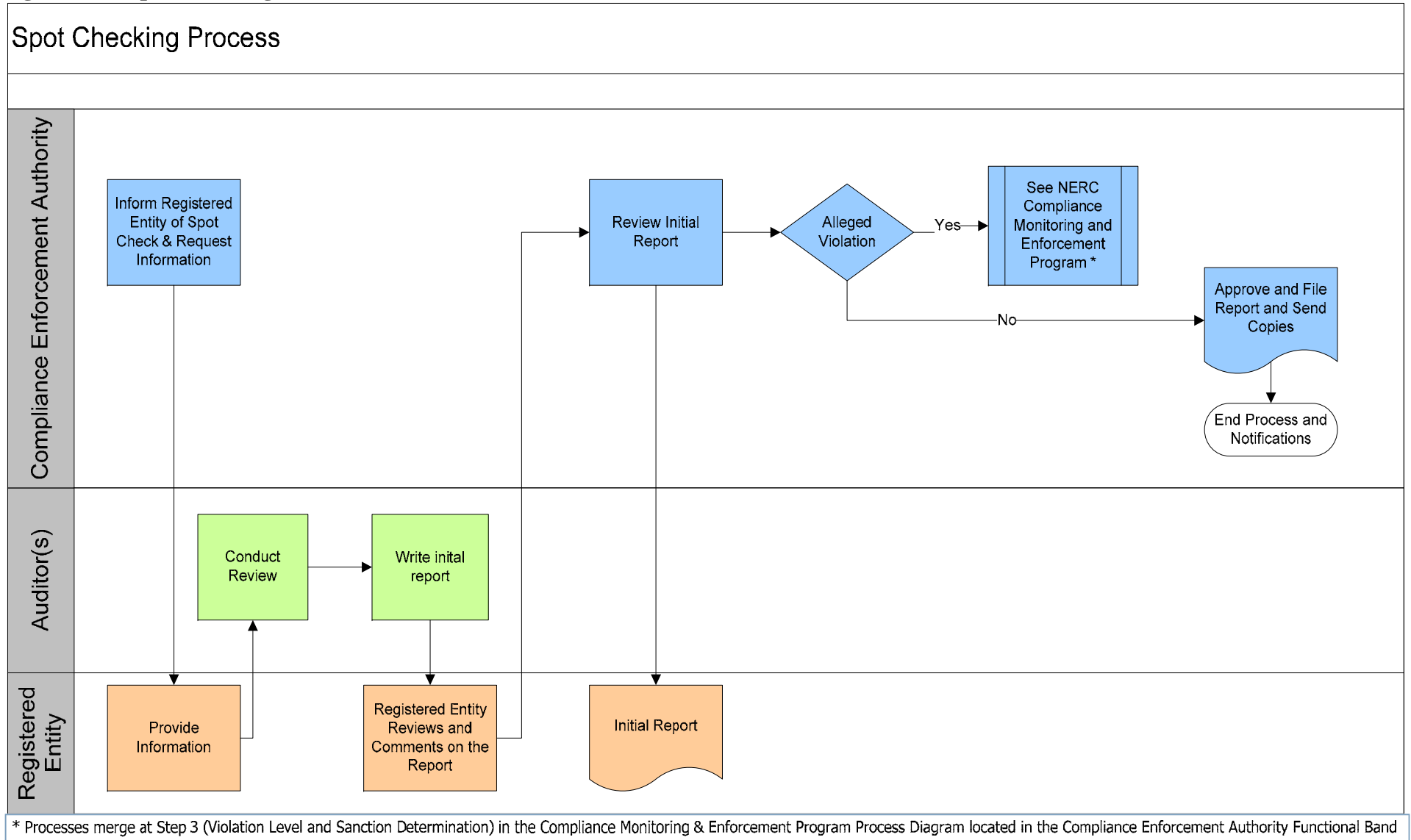
<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.

## Compliance Monitoring and Enforcement Program

- The Compliance Enforcement Authority completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by the Compliance Enforcement Authority or NERC in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means. Compliance Violation Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>4</sup> The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation. Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation of a U.S.-related matter, NERC shall provide notice to FERC of the investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an investigation of a non-U.S.-related matter, NERC shall provide notice of the investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

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<sup>4</sup> Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Violation Investigations into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:<sup>5</sup>

- The Compliance Enforcement Authority is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for its Compliance Violation Investigation, the Compliance Violation Investigation, as it unfolds, need not be limited to this scope.
- NERC assigns a NERC Staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the Compliance Violation Investigation team and their recent employment history. The Registered Entity may object to any individual on the Compliance Violation Investigation team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the Compliance Violation Investigation team. If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.
- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to a Compliance Violation Investigation may

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<sup>5</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.



## Compliance Monitoring and Enforcement Program

object to any member of the Compliance Violation Investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the Compliance Violation Investigation of the Registered Entity.

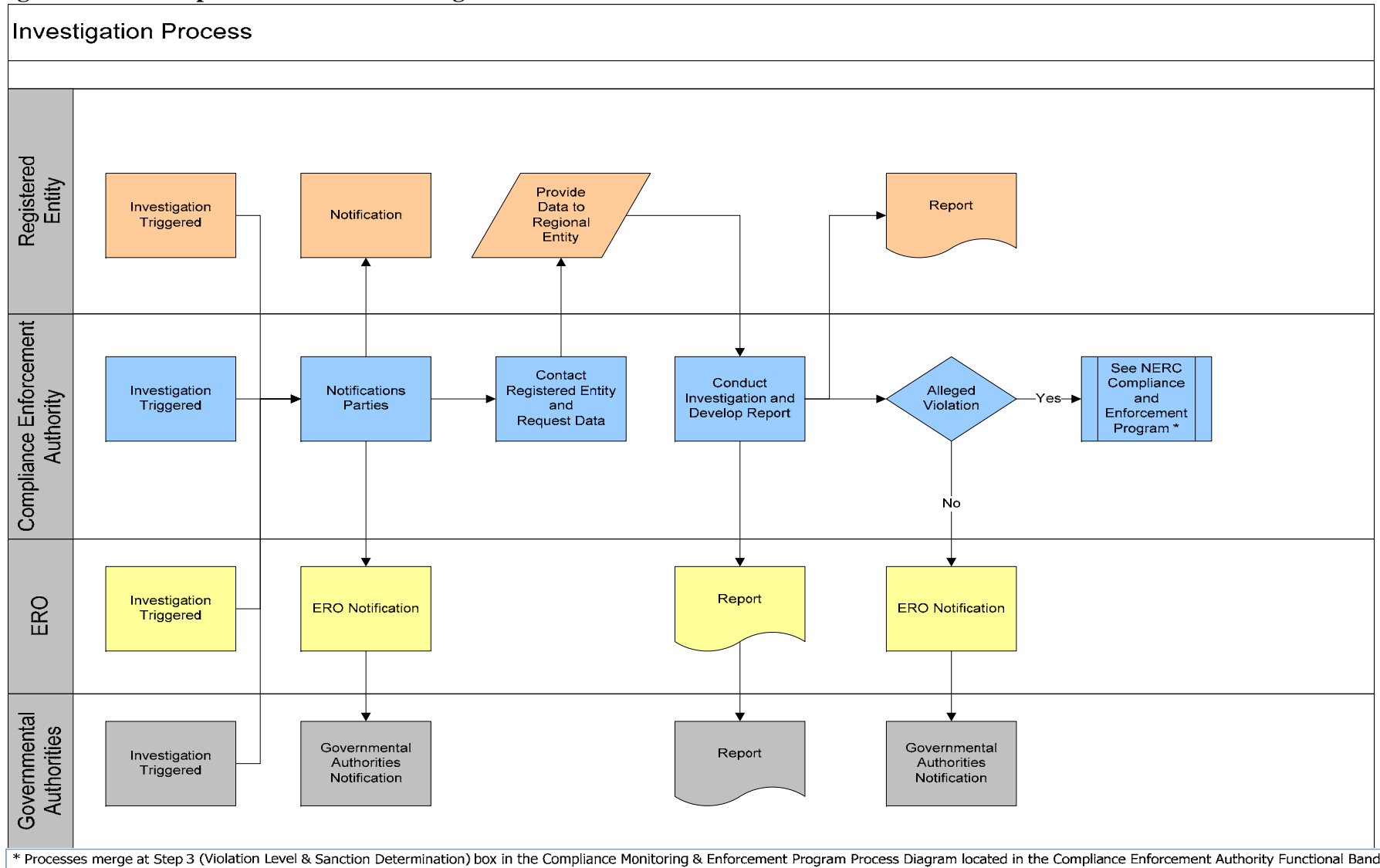
- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Violation Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Violation Investigation pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to

## **Compliance Monitoring and Enforcement Program**

any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>6</sup>

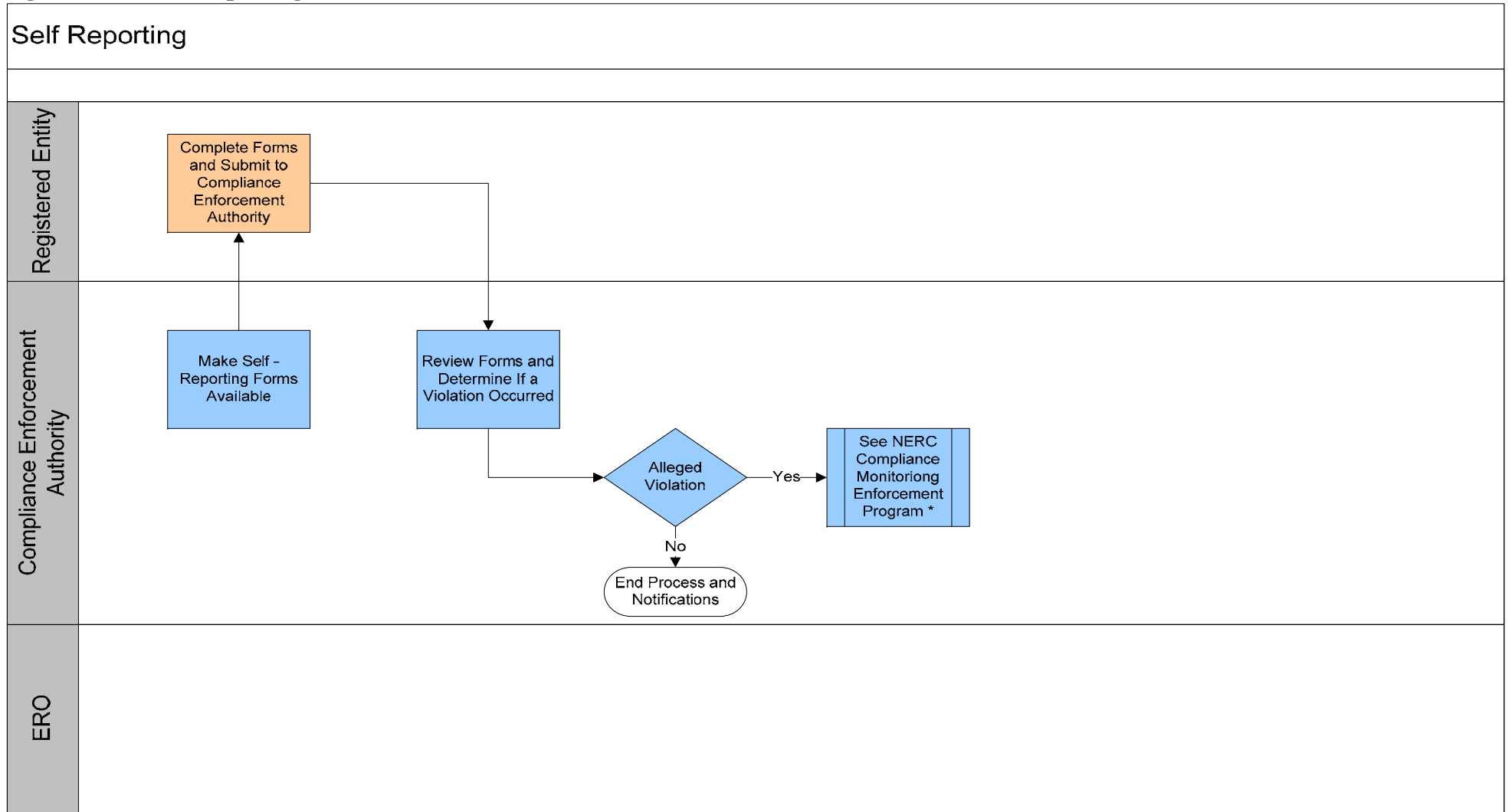
- The Compliance Enforcement Authority posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>6</sup>This process normally completes within sixty (60) days following the Compliance Enforcement Authority's receipt of data.

# Compliance Monitoring and Enforcement Program

## Figure 3.5.1 – Self Reporting Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the Compliance Enforcement Authority, or on an as-needed basis. Requests for data submittals will be issued by the Compliance Enforcement Authority to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>7</sup>

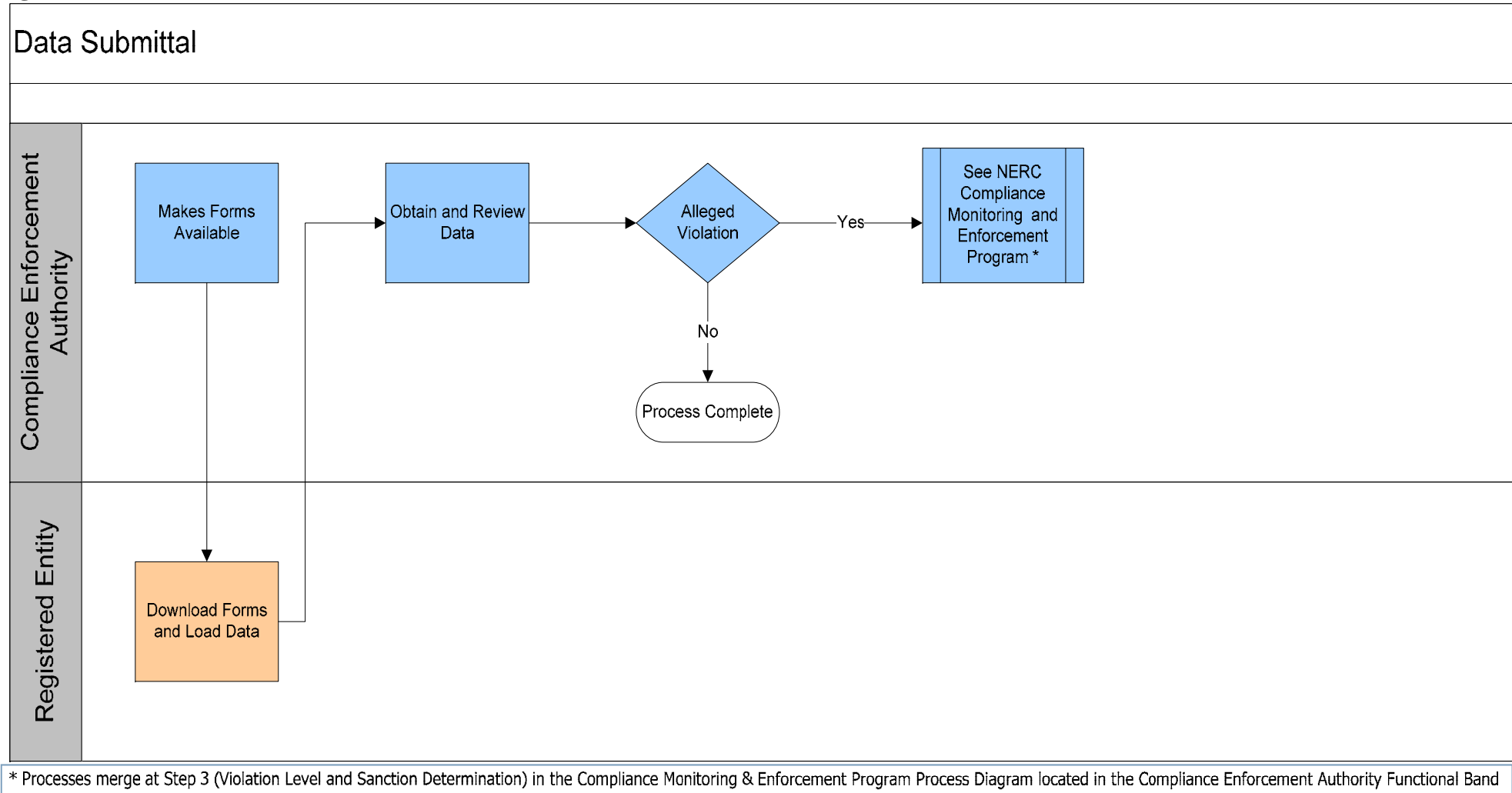
- The Compliance Enforcement Authority posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The Compliance Enforcement Authority ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its Web site.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The Compliance Enforcement Authority shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The Compliance Enforcement Authority shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. A Regional Entity will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures, (2) where the Regional Entity determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The Regional Entity will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>8</sup>

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and Regional Entity Web sites.

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<sup>8</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.



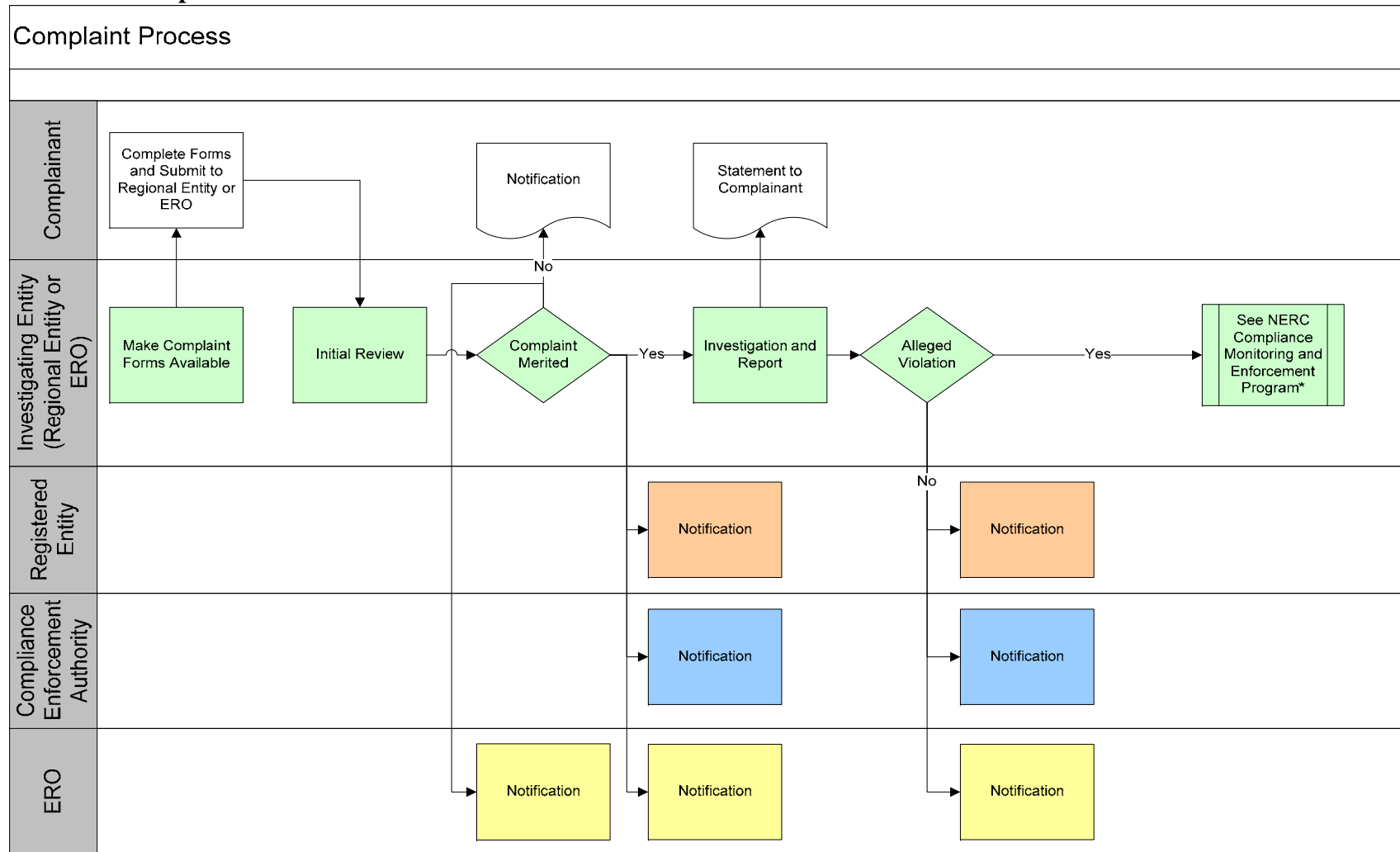
## **Compliance Monitoring and Enforcement Program**

The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment of whether the initiation of a Compliance Violation Investigation is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## **Compliance Monitoring and Enforcement Program**

### **3.8.2 Anonymous Complainant Notification Procedure**

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>9</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting possible violations to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## **4.0 ANNUAL IMPLEMENTATION PLANS**

### **4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan**

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### **4.2 Regional Entity Implementation Plan**

By November 1 of each year, Regional Entities will submit a Regional Implementation Plan for the following calendar year to NERC for approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's Web site.

## **5.0 ENFORCEMENT ACTIONS**

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC Sanction Guidelines (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the Sanction Guidelines by Regional Entities by direct oversight and review of penalties and sanctions, and each Regional Entity shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the Regional Entity.

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<sup>9</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## **Compliance Monitoring and Enforcement Program**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information other than in the context of the hearing procedures is unreasonable, the party may request a written determination from the NERC compliance program officer.

### **5.1 Notification to Registered Entity of Alleged Violation**

If the Compliance Enforcement Authority alleges that a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The Compliance Enforcement Authority may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction; and
- (vii) required procedures to submit the Registered Entity's Mitigation Plan.

## **Compliance Monitoring and Enforcement Program**

NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from the Compliance Enforcement Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

### **5.2 Registered Entity Response**

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and sanction (if applicable), in which case the Compliance Enforcement Authority shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the Compliance Enforcement Authority a response explaining its position, signed by an officer employee, attorney or other authorized representative, together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will become a Confirmed Violation when filed by NERC with FERC or other Applicable Governmental Authority.

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying the Compliance Enforcement Authority's designated hearing representative.<sup>10</sup>

### **5.3 Hearing Process for Compliance Hearings**

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

### **5.4 Settlement Process**

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC or another Applicable Governmental

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<sup>10</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the Compliance Enforcement Authority, the Registered Entity may file a request for hearing with the Compliance Enforcement Authority.

## Compliance Monitoring and Enforcement Program

Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.18 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The 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 the Regional Entity and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the Regional Entity will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement. The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**.<sup>11</sup>

On appeal, NERC shall either affirm the Regional Entity decision or remand to the Regional Entity with reasons for its decision, which may include a direction to the Regional Entity to revise the decision. If NERC directs the Regional Entity to revise its decision, whichever of the Registered Entity that was the subject of the decision or the Compliance Staff of the Regional Entity whose interests are adversely

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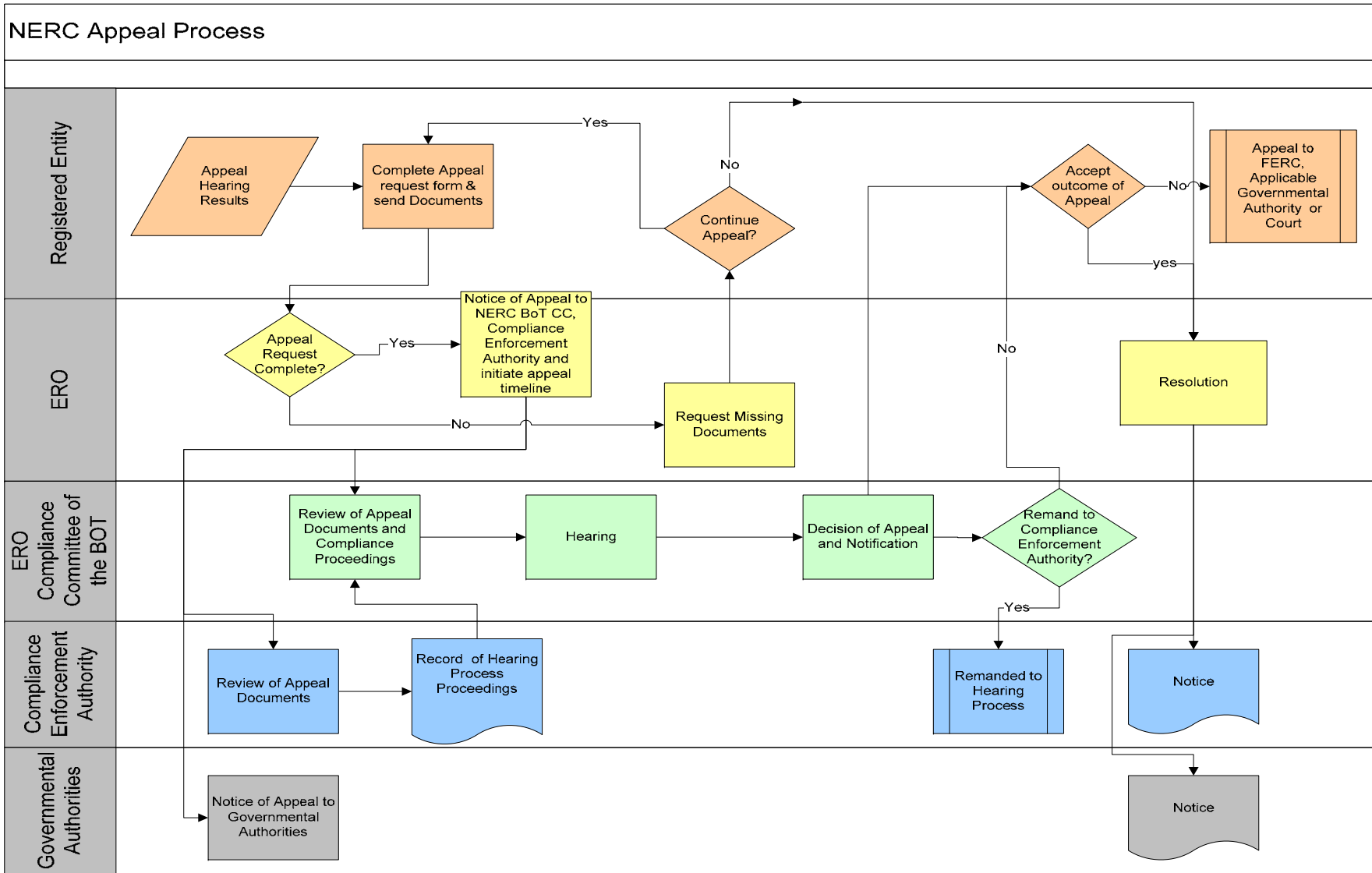
<sup>11</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

## **Compliance Monitoring and Enforcement Program**

affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

# Compliance Monitoring and Enforcement Program

## Figure 5.5 – NERC Appeal Process





## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty; Effective Date**

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the Regional Entity to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the Regional Entity, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon the expiration of the thirty-day period following filing with the FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

## **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information other than in the context of the hearing procedures is unreasonable, the party may request a written determination from the NERC compliance program officer.

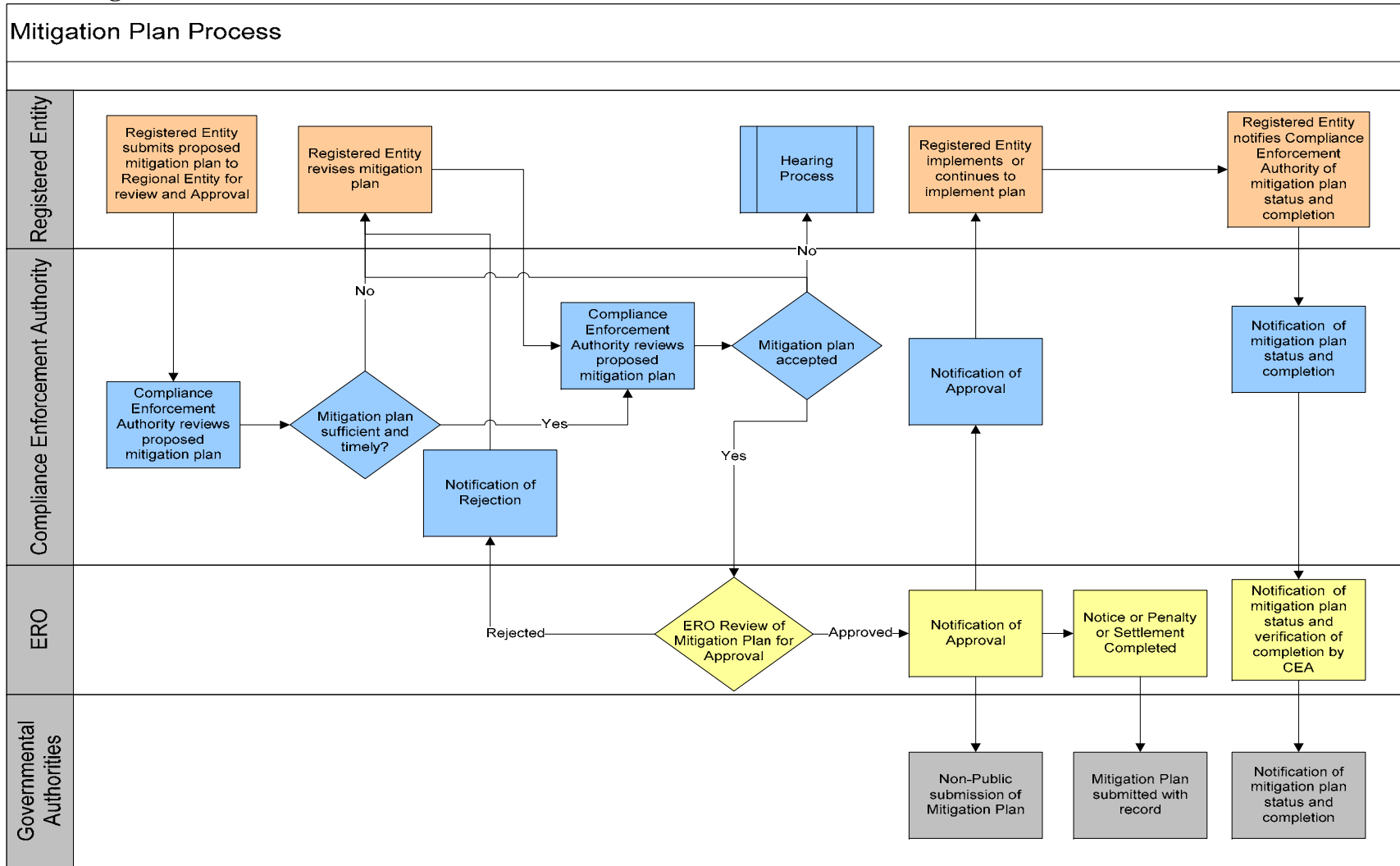
### **6.1 Requirement for Submission of Mitigation Plans**

A Registered Entity found to be in violation of a Reliability Standard that requires a mitigation plan shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process



## **Compliance Monitoring and Enforcement Program**

### **6.2 Contents of Mitigation Plans**

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### **6.3 Timetable for Completion of Mitigation Plans**

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The Compliance Enforcement Authority will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including: (i) short assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other

## **Compliance Monitoring and Enforcement Program**

extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the Regional Entity acting as Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### **6.4 Submission of Mitigation Plans**

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Regional Entity acting as Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

## **Compliance Monitoring and Enforcement Program**

### **6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans**

Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Regional Entities will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, and will notify the Regional Entity and the Registered Entity as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0 or as part

## **Compliance Monitoring and Enforcement Program**

of the public posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard in accordance with Section 5.4.

### **6.6 Completion/Confirmation of Implementation of Mitigation Plans**

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Regional Entities will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### **6.7 Recordkeeping**

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

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.

## **Compliance Monitoring and Enforcement Program**

- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

### **7.0 REMEDIAL ACTION DIRECTIVES**

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Regional Entity shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. The Compliance Enforcement Authority will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The Regional Entity will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days

## **Compliance Monitoring and Enforcement Program**

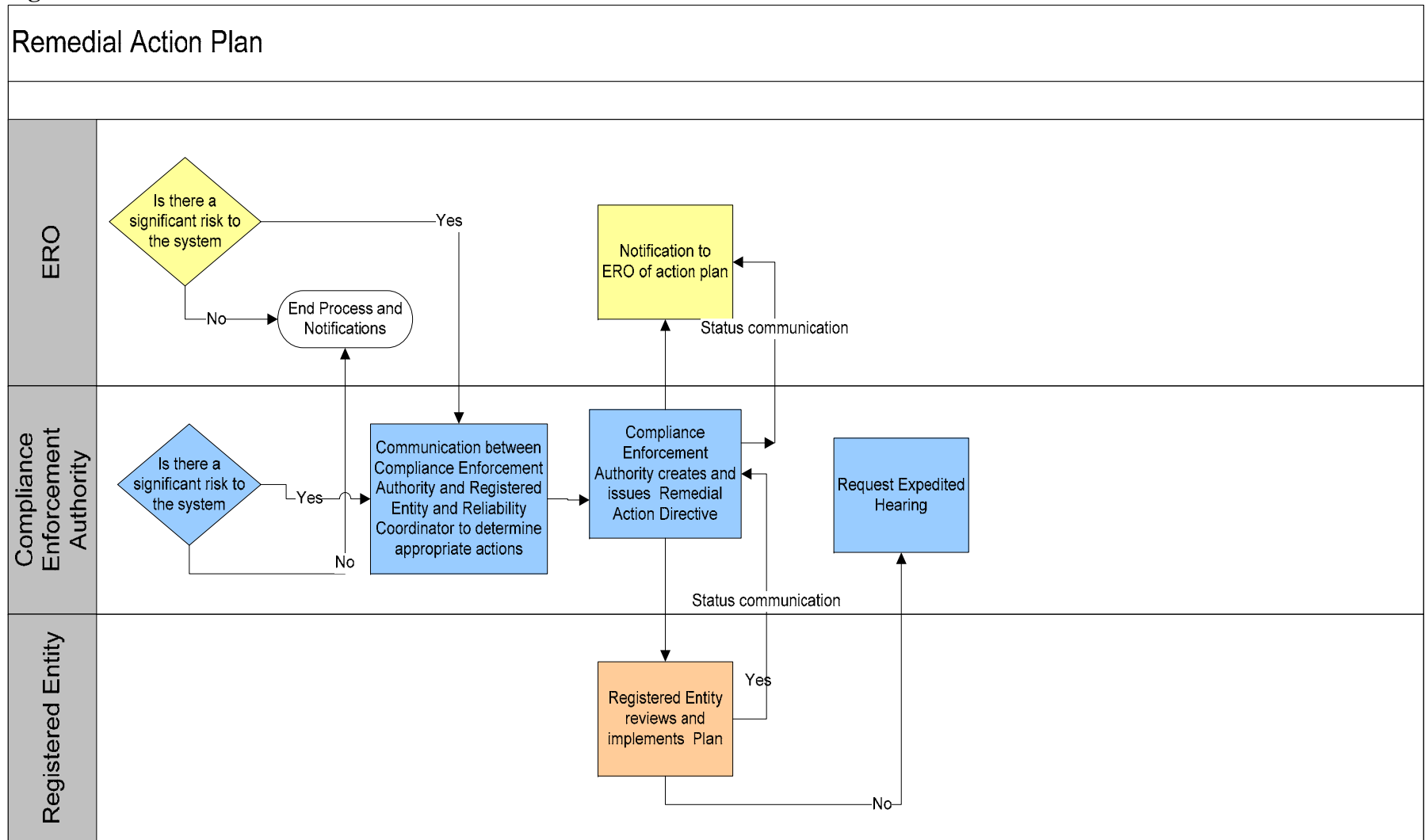
following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.



# Compliance Monitoring and Enforcement Program

Figure 7.0 – Remedial Action Process



## **Compliance Monitoring and Enforcement Program**

### **8.0 REPORTING AND DISCLOSURE**

Regional Entities shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

Regional Entities shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation that are received or obtained by the Regional Entity through any means, within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the Regional Entity shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority within two (2) business days of receiving such a report from the Regional Entity; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b)

Regional Entities shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.

Regional Entities shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements within ten (10) business days of each determination. At the same time, Regional Entities will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

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NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the Regional Entity to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authorities on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its Web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity

## **Compliance Monitoring and Enforcement Program**

under the Compliance Program. In providing the information and data to NERC, the Regional Entity shall preserve any mark of confidentiality.

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

The Compliance Enforcement Authority will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

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### **ATTACHMENT 1**

#### **PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA**

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard for which the Compliance Enforcement Authority has requested data, information, or other reports. The Compliance Enforcement Authority however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues

- Step 1:**                      **The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's designated contact.**
- Step 2:**                      **The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity's designated contact).**
- Step 3:**                      **The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity's chief executive officer or equivalent (with a copy to NERC, the Registered Entity's vice president or equivalent responsible for compliance and the Registered Entity's designated contact).**
- Step 4:**                      **Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.**

**A full Compliance Audit may be scheduled at this step.**

**Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.**

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### **ATTACHMENT 2**

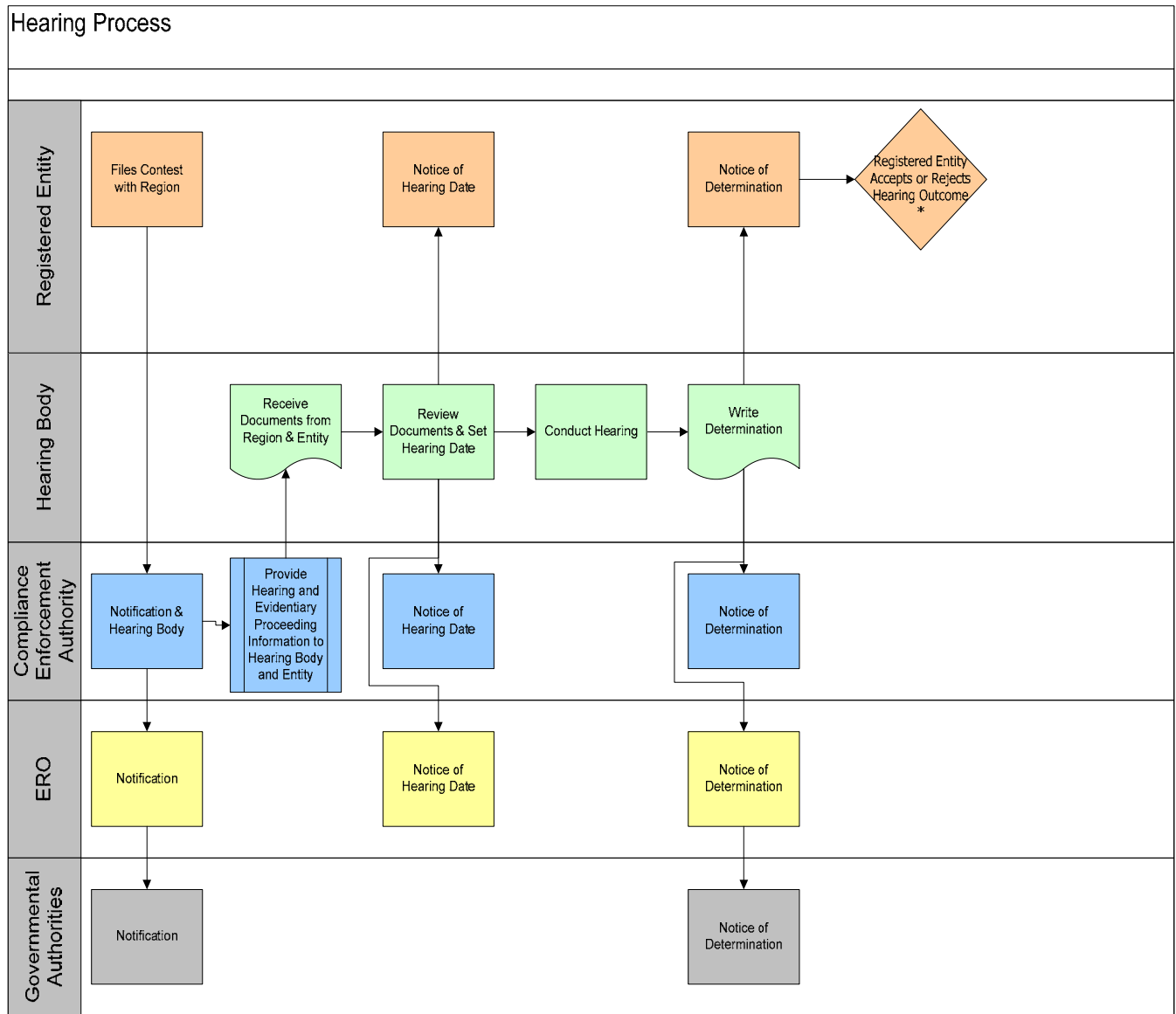
#### **COMPLIANCE ENFORCEMENT AUTHORITY HEARING PROCEDURES**

This **Attachment 2** sets forth the procedures to be followed to conduct compliance hearings. In this **Attachment 2**, the Compliance Enforcement Authority and the Registered Entity are sometimes referred to as the “parties.” Subject to the authority of the hearing body to alter or extend any time periods or deadlines specified in this **Attachment 2** and to hold such numbers of conferences and hearings as are necessary, it shall be the objective of the hearing process to complete the steps specified herein for formal compliance hearings within ninety (90) days following the issuance of written notice that the hearing body is convened.

**Figure ATT-2** shows the hearing process steps.

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**Figure ATT-2 –Hearing Process**



## 1.0 HEARING PROCEDURES

### 1.1 APPLICABILITY, DEFINITIONS AND INTERPRETATION

#### 1.1.1 Procedure Governed

These Hearing Procedures shall govern the procedure before the Western Electricity Coordinating Council (“WECC”) in proceedings concerning (i) disputes regarding whether any entity should be or has been properly registered or certified, (ii) whether Registered Entities within WECC’s area of responsibility have violated Reliability Standards, (iii) if so, to determine the appropriate Mitigation Plans, as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines

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approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), or (iv) any other dispute that relates to enforcement of reliability standards properly before the WECC.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity's Mitigation Plan, or requiring compliance with a Remedial Action Directive.

### **1.1.2 Deviation**

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer or the Hearing Panel for good cause shown, either upon the Hearing Officer's or the Hearing Panel's own motion or upon the motion of any Party.

### **1.1.3 Standards for Discretion**

These Hearing Procedures, and any discretion exercised hereunder, shall be interpreted in a manner intended to ensure just and reasonable proceedings and to effectuate the following Standards for Discretion:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in WECC proceedings should be treated fairly. To this end, Parties should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Party that would otherwise result from another Party's failure to act diligently and in good faith.
- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Party or interest group.
- d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the conflict of interest provisions of section 1.8.4 of these Hearing Procedures.
- e) Impartiality - Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Administrative Efficiency and Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.



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### **1.1.4 Definitions and Interpretation**

Unless otherwise defined, capitalized terms shall have the meanings described in the WECC Compliance Monitoring and Enforcement Program. Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular. To the extent the text of a rule is inconsistent with its caption, the text of the rule shall control.

The following terms shall have the following meanings:

“Adjudicatory Officer,” means any person serving as a member of the Hearing Panel, Hearing Officer or Technical Advisor with respect to any proceeding.

“Bulk-Power System,” for the purposes of these procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk” means the person designated by WECC to receive filings and serve documents issued by or on behalf of, and otherwise provide support for, the Hearing Panel and Hearing Officer.

“Compliance Hearing Body,” is as defined in the WECC Compliance Hearing Body Charter.

“Critical Energy Infrastructure Information,” as defined in Section 1501 of the NERC Rules of Procedure.

“Critical Energy Infrastructure Information,” as defined in Section 1501 of the NERC Rules of Procedure, means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates to details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure.

“Cybersecurity Incident,” as defined in 18 C.F.R. § 39.1.

“Director of Compliance” means the Director of Compliance of WECC, who is responsible for the management and supervision of Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

## **Compliance Monitoring and Enforcement Program**

“Hearing Panel” means the persons assigned to render a final decision in matters requiring a determination under these Hearing Procedures.

“NERC” means North American Electric Reliability Corporation.

“Notice of Proceeding” means (1) a request for a hearing by a Registered Entity to contest an Alleged Violation, a proposed Penalty or a Remedial Action Directive, (2) a request for hearing by a Registered Entity or the Staff concerning a dispute as to whether the entity should be registered or certified, (3) a request for hearing by a Registered Entity in response to a Staff rejection of a proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan, or (4) any other notice that a proceeding has been properly commenced.

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” has the meaning set forth in the Federal Power Act, as it may be amended from time to time.

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

“Service List,” means the list maintained by the Clerk identifying the name, address, telephone number, and facsimile number and email address, if available, of each Party, the Hearing Officer, the Director of Compliance, the Registered Entity’s designated agent for service and any other individuals designated for service by a Party.

“Staff” means individuals employed or contracted by WECC who have the authority, among other things, to make initial determinations as to need for registration, compliance or violation with Reliability Standards by Registered Entities and associated Penalties, Mitigation Plans, and Remedial Action Directives.

“WECC’s area of responsibility” means WECC’s corporate region.

### **1.2 FILING AND SERVICE**

#### **1.2.1 Form and Content of Filings**

All filings shall include (1) a caption that sets forth the title and docket number (if any) of the proceeding, (2) a heading that describes the filing and the Party on whose behalf the filing is made, (3) the name, address, telephone number and email address of the Party’s representative of the making, and (4) the service list. All filings shall be signed by an authorized representative of the Party on whose behalf the filing is made. The signature constitutes a certificate that the

## **Compliance Monitoring and Enforcement Program**

signer has read the filing, that the contents are true to the best of the signer's knowledge and belief, and that service required by these Hearing Procedures has been made. Each filing shall include a service list identifying the Parties and authorized representatives served.

All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. Typeface shall be either Arial or Times New Roman font, black type on white background, and at least 12-point (at least 10-point for footnotes). Written testimony shall include continuous line numbers on the left-hand side of each page of text. Attachments shall, whenever practical, conform to these requirements, except that any typeface shall be at least 8-point. Confidential documents shall comply with the requirements of any Protective Order issued under Section 1.10.

### **1.2.2 Submission of Filings**

The original and five copies of any filing shall be made with the Clerk of WECC during WECC business hours (0800-1630 Mountain Time) each day except Saturday, Sunday, legal holidays and any other day declared by the WECC. Filing is complete when date stamped by the Clerk or received in the electronic mail by the Clerk.

Unless as otherwise provided, a filing may be effected by electronic mail if the filed documents are in pdf format and the requisite number of copies are delivered to the Clerk's office within seven business days thereafter.

### **1.2.3 Service**

A copy of each filing must served on each person listed on the service list, by personal delivery, email (with paper copy to follow), United States mail (first class or registered) mail or deposit with an express courier service. The Clerk shall provide copies of all issuances of the Hearing Officer and Hearing Panel by similar means to each person listed on the service list and each member of the Hearing Panel, provided that the Initial and Final Decisions shall be served electronically and by certified mail on the Registered Entity and the Staff. Service is effective immediately if by personal delivery or email, upon deposit in the U.S. mail, or upon delivery to an express courier service.

### **1.2.4 Time**

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the Office of WECC is closed, in which event the last day shall be the first succeeding day that is not such a day. Any Party requesting an extension of time after the expiration of the period prescribed shall demonstrate circumstances sufficient to justify the failure to act in a timely manner. Unless otherwise provided, whenever a Party has the right or is required to do some act within a prescribed period after the service, four days shall be added to the prescribed period when served by mail and the period until the next business day shall be added if served by courier.

## **Compliance Monitoring and Enforcement Program**

### **1.3 PLEADINGS, MOTIONS AND OTHER FILINGS**

#### **1.3.1 Initiation of a Proceeding**

A proceeding is initiated by a Notice of Proceeding. Any Notice of Alleged Violation or other action triggering a right to a hearing shall clearly state (as applicable) that the Registered Entity has the right to contest proposed registration or certification, that the Registered Entity has a right to a hearing, and shall describe or include (as applicable) the alleged violation, the proposed Penalty, the Staff's rejection of the proposed Mitigation Plan, or the issuance of a Remedial Action Directive. Upon receipt of a Notice of Proceeding, the Clerk shall issue a notice of hearing, which identifies the Hearing Panel and, if applicable, the Hearing Officer assigned to the proceeding, and assigns a docket number that includes (separated by dashes) (1) the last two digits of the month and year, (2) the letters "[Regional Entity designation]", and (3) a four digit number that is assigned sequentially beginning January 1 of each year (*e.g.*, 0707-WECC-0001).

Within five business days after the issuance of a Notice of Proceeding, WECC staff shall file and serve the notice of the Alleged Violation, the sanction originally provided to the Registered Entity and copies of any documents gathered and reviewed by WECC in the course of determining an Alleged Violation has occurred and in determining the proposed sanction or penalty. Within twenty days after the issuance of the Notice of Proceeding, (1) the Registered Entity shall file (as applicable) an explanation of why the Alleged Violation is in error, why the registration determination is in error, why the proposed penalty or sanction is inappropriate and/or the Registered Entity's proposed Mitigation Plan, together with copies of all documents relied on by the Registered Entity to support its position, and (2) (if applicable) the Staff shall file its explanation why the Registered Entity's proposed Mitigation Plan was not accepted, and copies of all documents relied on by the Registered Entity to support its position.

#### **1.3.2 Amendments**

Amendments to any filings initiating a proceeding or requesting a hearing may be allowed by the Hearing Officer or the Hearing Panel upon motion made within a reasonable time after the basis for the amendment became apparent, on such terms and conditions as are deemed to be just and reasonable.

#### **1.3.3 Requirements for Motions**

Unless otherwise provided, a Party may at any time seek any relief provided for under these Hearing Procedures or otherwise applicable authority by filing a motion in writing (or orally if during a hearing). All motions shall include a plain and concise statement of any facts upon which the motion is based, citations to the record or other sources, if available, any required verification under oath by a person having knowledge of the matters set forth in the filing, a description of the specific relief sought, and the authority that supports the request for relief. Unless otherwise provided, any responses to motions shall be filed within 14 business days after service of the motion, and replies to responses shall be filed within seven business days after service of the responses.

The Hearing Panel or Hearing Officer, in their discretion, may elect to hold oral argument on any matters in dispute.

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### **1.3.4 Intervention; Consolidation of Related Proceedings**

No interventions shall be permitted except upon approval of FERC. The Hearing Panel or Hearing Officer may, upon motion or their own initiative, order two or more matters partially or fully consolidated for any or all purposes if (1) events giving rise to the proceeding are the subject of another proceeding involving another Registered Entity, (2) it appears likely that consolidation is necessary to obtain all information necessary for decision and (3) reasonable procedures can be developed to prevent inappropriate disclosure of confidential information. Consolidation shall not be ordered unless all Parties in all proceedings have been provided notice and opportunity to be heard

### **1.3.5 Summary Disposition**

The Hearing Panel or Hearing Officer may, upon motion or their own initiative, order summary disposition, in whole or in part, if there are no genuine issues of material fact with respect to the matters subject to summary disposition and the Party is entitled to summary disposition as a matter of law. Any factual allegations contained in a motion for Summary Disposition shall be supported by affidavit.

### **1.3.6 Interlocutory Review**

Where the ruling for which interlocutory review is sought (1) presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding or (2) involves a requirement that a non-Party produce information or testimony, a Party or person subject to the ruling may seek interlocutory review of any Hearing Officer ruling within 14 business days after the ruling. The Hearing Panel may affirm, reverse, remand, decline to act or take any other action on the Hearing Officer's ruling.

### **1.3.7 Pre-Evidentiary Hearing Submission of Testimony and Evidence**

With the exception of examination of an adverse witness and of testimony and documents of a non-Party subject to an order to compel, all witness testimony, exhibits, and any documents intended to be introduced in connection with cross-examination, shall be filed at least five business days in advance of the evidentiary hearing pursuant to a schedule adopted for the proceeding.

### **1.3.8 Pre-Evidentiary Hearing Memorandum**

Upon request of the Hearing Officer or the Hearing Panel, the Parties may be required to submit a memorandum prior to hearing describing the Party's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. A Party will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum.

## **1.4. DOCUMENT PRODUCTION**

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

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

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Within five (5) business days of the initiation of the proceeding, the Staff shall make available to the Registered Entity for inspection and copying, all documents prepared by the Staff or obtained from the WECC, the Registered Entity or other sources, through or in connection with any compliance process that led to the institution of proceedings and not previously made available, including but not limited to all requests for information and responses, transcripts and transcript exhibits. Documents shall be made available during normal business hours at the WECC office where the documents are ordinarily maintained, or at such other office as the Hearing Panel or Hearing Officer, in his or her discretion, shall designate, or the Parties otherwise agree. The Registered Entity shall be responsible for the cost of photocopying, which shall be at a reasonable rate. Documents received by the Staff thereafter shall be made available to the Registered Entity within 14 business days after receipt or as soon as possible if within 14 business days of the evidentiary hearing. In cases involving more than one Party other than the Staff, the Hearing Officer or Hearing Panel shall determine the extent to which, and conditions governing the provision of, documents relating to one Party shall be made available to another Party.

### **(b) Documents That May Be Withheld**

The following documents are not subject to disclosure:

(1) Documents subject to a privilege available to the Staff or constituting attorney work-product of Staff's counsel (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);

(2) Documents that would disclose (i) an examination, investigatory or enforcement technique or guideline of WECC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, WECC, a federal, state, or foreign regulatory authority, or a self-regulatory organization;

(3) Documents containing confidential information, to the extent that disclosure would violate any applicable confidentiality requirement; or

(4) Documents not relevant to the subject matter of the proceeding or, upon order of the Adjudicatory Officer, for other good cause shown.

Provided, however, that nothing in Subparagraphs 1.4.1(b)(2), (3), (4) authorizes Staff to withhold a document, or part thereof, that contains exculpatory evidence, and nothing in Subparagraph (b)(1) requires Staff to withhold a document from disclosure.

The Staff shall provide to the Registered Entity, at the time the documents are provided, a list of documents withheld. Upon motion based on reasonable belief of a violation of these provisions or on their own motion, the Hearing Panel or Hearing Officer may require Staff (1) to submit any

## Compliance Monitoring and Enforcement Program

withheld document and (2) disclose to Registered Entity any document not meeting the standards of this subsection.

### 1.4.2 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Registered Entity pursuant to Subparagraph 1.4.1(a), the Parties shall be entitled to utilize all other methods for obtaining information provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, requests for admission and orders to compel (with respect to references to subpoenas, and which may be directed to non-Party Registered Entities as well as Parties). Unless otherwise directed by the Hearing Officer or Hearing Panel upon motion by a Party or by the Hearing Officer, or by the Hearing Panel on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- 1) The provisions of Subparagraph 1.4.1(b) shall apply to any such discovery.
- 2) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- 3) The Hearing Officer and the Hearing Panel have the authority to issue orders to compel the appearance by, or production of documents or information by, only a Person that is a Party or a Registered Entity that is not a Party. The Hearing Officer and the Hearing Panel do not have authority to require a United States marshal or deputy marshal to serve any order to compel.
- 4) A list of documents withheld shall be provided, by the deadline for production of the documents, to the Adjudicatory Officer and each Party entitled to receive the documents.
- 5) References to the “Commission” in Rules 402 through 408 and 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d) and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Panel, and (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Staff, and the reference in Rule 510(e)(3) shall be deemed to be to the Adjudicatory Officer.
- 6) Unless otherwise ordered by the Hearing Officer or Hearing Panel, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, request for admissions, or order to produce or provide documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or the date of the order.

## **Compliance Monitoring and Enforcement Program**

- 7) Unless otherwise ordered by the Hearing Officer or Hearing Panel, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraph 1.5.2.

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### **1.5 HEARINGS AND CONFERENCES**

#### **1.5.1 General**

The Clerk shall issue a notice for each conference and hearing, which shall identify the matter(s) to be considered, the person(s) comprising the Hearing Panel or Hearing Officer, and the date, time and place of the hearing or conference. Unless otherwise ordered, all hearings and conferences shall be held during normal business hours at the principal office of WECC. Hearings need not be held on consecutive days.

All hearings, conferences, and other meetings shall be closed to the public, and all notices, rulings, orders or any other issuances of the Hearing Officer or Hearing Panel shall be nonpublic and held in confidence by the Parties unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determines that public release is appropriate. Only the Adjudicatory Officers, representatives of the Parties, and other necessary personnel (such as court reporters) shall be allowed to participate in or obtain information relating to the proceeding.

Upon a request, the Hearing Panel or Hearing Officer may permit Parties to appear and witnesses to testify via videoconference or teleconference at any conference or hearing if necessary to avoid undue expense or undue delay in the proceeding.

All hearings and (at the discretion of the Hearing Panel or Hearing Officer) all conferences shall be transcribed verbatim by a certified court reporter. A Party may request corrections to the transcript within 35 days after receipt of the transcript and any responses shall be filed within ten business days thereafter. Each Party is responsible for the costs of a copy of any transcript ordered by it.

#### **1.5.2 Prehearing and Status Conferences**

A prehearing conference shall be held within a thirty days after initiation of a proceeding, to identify issues then known to the Parties, establish a schedule and to address any other relevant matter. Any Party may request, and the Hearing Panel or Hearing Officer may call, a status



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conference at any time subsequent to the Prehearing Conference to address any issues that have arisen. The Hearing Panel or Hearing Officer may summarize actions taken in a memorandum.

### **1.5.3 Evidentiary Hearings**

A Party has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts. All testimony shall be under oath.

Evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, but may be excluded if immaterial or unduly repetitious or prejudicial. The Hearing Panel or Hearing Officer may exclude material from the record only in response to a motion or objection by a Party.

Upon 14 business days' advance notice and subject to the objection by another Party, any Party may call and cross-examine as an adverse witness, any other Party, or any employee or agent thereof or Registered Entity that has been subject to an order to compel.

Upon motion, the Hearing Panel or Hearing Officer may take official notice of and the type of information any of the following:

- 1) Rules, regulations, administrative rulings and orders, and written policies of governmental bodies and Regional Entities, including WECC;
- 2) Municipal and other ordinances;
- 5) Generally recognized scientific or technical facts within the specialized knowledge of WECC;
- 4) Other facts not reasonably subject to dispute; and
- 6) All other matters of which the courts of the United States may take judicial notice.

Any document, and any item officially noticed that exists in document form, shall be introduced into the record in the form of an exhibit.

The Hearing Panel or (prior to issuance of an Initial Decision) the Hearing Officer may allow oral argument, and also may reopen the evidentiary record and hold additional hearings if warranted by any changes in fact or law since the hearing.

### **1.5.4 The Record**

The record shall include the following:

- 1) The filing(s) that initiated the proceeding, responsive documents, and a list of all documents comprising the record;
- 2) Notices, rulings, orders, decisions and other issuances of the Hearing Officer and Hearing Panel;

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- 3) All motions, briefs and other filings;
- 4) All prefiled testimony, exhibits, other evidence, information excluded from evidence, transcripts and matters officially noticed;
- 5) All Notices of *ex parte* communications and any notifications of recusal and motions for disqualification of any Adjudicatory Officer and any responses or replies thereto;
- 6) The Hearing Officer's Initial Decision, and exceptions thereto; and
- 7) The Hearing Panel's Final Decision and any Notice of Penalty therewith.

### **1.5.5 Briefs and Other Post-Hearing Pleadings**

At the close of the evidentiary hearing, Parties may file initial briefs, proposed findings of fact and reply briefs. Absent good cause shown, post-hearing pleadings shall not seek to introduce additional evidence into the record after the hearing has ended.

## **1.6 DECISIONS**

### **1.6.1 Initial Decisions**

The Hearing Officer shall issue an Initial Decision that shall include (1) a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record, and (2) appropriate proposed orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. Any proposal for a Penalty shall include a proposed Notice of Penalty. The Initial Decision shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be Critical Energy Infrastructure Information protected pursuant to Paragraph 1.10. The Initial Decision shall normally be issued within thirty days following the submission of post-hearing briefs, or, if waived, following the conclusion of the hearing.

Any Party may file exceptions to the Initial Decision and replies consistent with any deadlines established in the proceeding.

### **1.6.2 Hearing Panel Final Decision**

The Hearing Panel shall issue a Final Decision following the receipt of (1) the Initial Decision, any exceptions and replies thereto, and oral argument, if any, (where a Hearing Officer has been appointed) or (2) the briefs and reply briefs (where no Hearing Officer was appointed). The Hearing Panel shall strive, but shall not be required, to issue its Final Decision within thirty (30) days after the matter is ready for decision.

In cases where a Hearing Officer is appointed, the Final Decision may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Decision shall include (1) a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record, and (2) appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. If the

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Final Decision imposes a Penalty, it shall be entitled Final Order and Notice of Penalty. The Final Order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.9.

When the Hearing Panel serves the Final Decision, it will inform the Parties of their appeal rights. The Clerk shall transmit the documents identified in Section 1.5.4, which shall constitute the record for purposes of 18 C.F.R. § 39.7(d)(5), to the ERO at the time it serves the ERO with the Final Decision.

### **1.6.3 Appeal**

A Final Decision of the Hearing Panel may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit the record of any docket to NERC that is the subject of an appealed Final Order.

### **1.6.4 Settlement**

Settlement Agreements may be entered into at any time including prior to the issuance of a Notice of Proceeding or during an appeal at the ERO, until a Notice of Confirmed Violation, Notice of Penalty, Notice of Mitigation Plan or Remedial Action Directive, whichever is applicable, is filed with the appropriate regulatory authority. All Settlement Agreements entered into prior to the issuance of a Final Decision shall be subject to approval of the Hearing Panel. Any rejected Settlement Agreement shall not be admissible into evidence and the proceedings shall continue as if the Settlement Agreement had not been filed.

## **1.7 PARTIES AND APPEARANCES**

### **1.7.1 Parties**

The Parties shall include: the Registered Entity who is subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable; the Staff and any other person allowed or required by FERC to participate as an intervenor in a proceeding conducted pursuant to these Hearing Procedures.

### **1.7.2 Appearances**

Parties shall file written appearances within seven (7) business days after service of the filing initiating the proceeding. A Party's written appearance shall identify the name(s) of each individual authorized to represent the Party in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, association, partnership or governmental body may appear by an attorney or any *bona fide* officer or designee who has the authority to act on behalf of the Party.

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

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

Any attorney appearing on behalf of a Party shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

### **1.7.3 Confidentiality**

All participants in any proceeding before the Hearing Panel shall be take all actions necessary to be bound by confidentiality obligations consistent with NERC Rule of Procedure 1504.

## **1.8 RESPONSIBILITIES OF ADJUDICATORY OFFICERS**

### **1.8.1 Hearing Panel**

The Hearing Panel shall be selected from the Compliance Hearing Body, as provided in the WECC Compliance Hearing Body Charter, and the composition of the Hearing Panel shall assure that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Panel. The Hearing Panel is vested with all necessary the authority to preside over all matters relating to a proceeding, including the following:

1. To establish the scope of the proceeding, including segregation of issues into separate phases of the proceeding and consolidation of related proceedings;
2. Take such action as necessary to assure the confidentiality of the proceeding and documents produced in connection with the proceeding;
3. Establish and modify the schedule for the proceeding, and modify any deadline or required interval;
4. Supervise discovery and rule on any disputes relating thereto;
5. Preside over prehearing conferences, status hearings, oral arguments and evidentiary hearings, including administering oaths and affirmations, ruling on evidentiary matters, requiring the introduction of additional evidence;
6. Issue a Final Decision and rule upon all motions and all other requests for relief;
7. Take other actions necessary and appropriate for the adjudication of the proceeding.

All actions (including all rulings, orders and determinations) of the Hearing Panel shall require a quorum consisting of a majority of the persons assigned to the Hearing Panel, unless waived by the Parties in a particular circumstance, subject in all events to the requirement that no two industry segments may control, and no single industry segment may veto, Hearing Panel actions. All rulings, orders and determinations of the Hearing Panel shall require the vote of a majority of the persons constituting a quorum. Where necessary, one or more persons assigned to the Hearing Panel may participate by teleconference as long as a majority are present in person;

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provided that all persons assigned to the Hearing Panel may participate by teleconference with respect to a Remedial Action Directive hearing. All rulings, orders and determinations shall be recorded in a written ruling or in a transcript and shall be designed to promote the conduct of a full, fair and impartial proceeding and to effectuate the standards of discretion.

### **1.8.2 Hearing Officer**

WECC may designate one or more Staff members, third-party contractors, or industry stakeholders to serve as Hearing Officers and may thereby preside over any aspect of the proceeding to the same extent as the Hearing Panel, except that the Hearing Officer will issue an Initial Decision and the Final Decision or other order finally disposing of the proceeding or issues within the proceeding must be issued by the Hearing Panel.

### **1.8.3 Technical Advisor**

The Hearing Officer and/or the Hearing Panel may designate one or more Staff members, third-party contractors, or industry stakeholders to serve as Technical Advisors to assist in any proceeding by providing technical advice.

### **1.8.4 Conflict of Interest**

A person shall be disqualified from serving as an Adjudicatory Officer in any proceeding if (1) he or she has been involved in or consulted at any time in regard to any Staff investigation, initial determination of violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan relating to the proceeding or (2) his or her participation would violate WECC's applicable conflict of interest policies. An Adjudicatory Officer shall recuse himself or herself from serving in proceeding if disqualified.

Any Adjudicatory Officer shall disclose to the Service List his or her identity, employment history and professional affiliations within two business days of assignment to the proceeding.

### **1.8.5 *Ex Parte* Communications**

No Adjudicatory Officer assigned to a proceeding may communicate concerning any matter relating to the proceeding, directly or indirectly with any Person who is not an Adjudicatory Officer with respect to a proceeding, except after reasonable notice to all Parties and opportunity to participate.

Any Adjudicatory Officer who makes or receives an *ex parte* communication shall, within seven (7) business days, file and serve on the Parties a description of the date, time, place, substance of and a list of each person making or receiving the *ex parte* communication, and include any written *ex parte* communication.

### **1.8.6 Motion for Disqualification**

Any Party may move to disqualify an Adjudicatory Officer on the basis of conflict of interest, or on the basis of a prohibited *ex parte* communication or other circumstances that could interfere with the impartial performance of his or her duties. The motion shall describe the underlying facts by affidavit and shall be filed within fifteen days after the Party learns of the facts believed to constitute the basis for disqualification or reasonably in advance of any hearing, whichever is

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earlier. The ruling on a motion to disqualify an Adjudicatory Officer shall be made by the Hearing Panel, provided that the ruling on a motion to disqualify a Hearing Panel member shall be made by the Hearing Panel without participation by the member subject to the motion. Any challenge to a disqualification ruling by a Hearing Officer is waived if no interlocutory appeal has been filed within five business days of the ruling. Any disqualified Adjudicatory Officer shall be replaced as soon as practicable.

### **1.9 REMEDIAL ACTION DIRECTIVES**

#### **1.9.1 Initiation of Remedial Action Directive Hearing**

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. Notice of the Remedial Action Directive shall not be effective until actual receipt by the Registered Entity, as provided in Section 7.0 of the Compliance Monitoring and Enforcement Program. WECC will notify NERC within two (2) business days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the WECC that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following actual receipt of the Remedial Action Directive. If the Registered Entity does not give written notice to WECC within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a Notice of Hearing.

#### **1.9.2 Remedial Action Directive Procedure**

Proceedings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. All other provisions of the Hearing Procedures shall apply to the Remedial Action Directive hearing unless inconsistent with or inapplicable to the procedures set forth in this paragraph.

The Remedial Action Directive hearing will be conducted according to the following guidelines:

- a) The Hearing Panel or Hearing Officer will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference. The provisions in Section 1.4 concerning document production shall not apply.
- c) At the evidentiary hearing, Staff and the Registered Entity shall have the opportunity to present oral witness testimony and evidence, which shall be rendered under oath, and to conduct cross-examination.

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- d) At the evidentiary hearing, the Parties shall have the opportunity to make opening and closing statements, but shall not file any briefs or draft opinions, and oral argument shall not be held.
- e) The Hearing Panel shall issue a summary written decision within ten (10) business days following the hearing, stating whether the Registered Entity shall (upon receipt of the decision) or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate. In the event a Hearing Officer has been appointed, the Initial Decision will be issued within a timeframe that permits review and comment by the Parties and issuance of a summary written decision within the ten-day deadline.
- f) Within thirty (30) days following issuance of its summary written decision, the Hearing Panel shall issue a full written decision. The written decision shall state the conclusions of the Hearing Panel with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Panel's conclusions.
- g) The Final Decision may be appealed to NERC pursuant to section 1.6.3.

### **1.10. PROTECTIVE ORDERS**

- a) At any time during a proceeding, including in connection with document production under section 1.4, on the Hearing Officer's or the Hearing Panel's own motion or on the motion of any Party, an order may be entered to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Party.
- b) The following types of information will be considered entitled to protection through a Protective Order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; or (vi) investigative files that would disclose investigative techniques. Nothing in this Subparagraph shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.4.1(b)
- c) A Party submitting a motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, information or studies, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer or Hearing Panel.

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- e) The protective order shall identify the data, information or studies that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information. The order shall also specify any required indications of confidentiality, such as colored paper or notation.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Party for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer or Hearing Panel shall exclude from the hearing all individuals other than those entitled to access to the proprietary information in accordance with the protective order.



# **EXHIBIT E**

## **1. Scope of activities funded through the ERO funding mechanism**

The WECC activities that will be funded through the ERO funding mechanism are as follows:

1. Reliability Standard Development
2. Compliance Enforcement  
This category will encompass WECC's Compliance Enforcement Program, including activities under the WECC Reliability Management System
3. Organization Registration and Certification
4. Reliability Readiness Evaluation and Improvement
5. Reliability Assessment and Performance Analysis  
This category includes WECC's Transmission Expansion Planning Program, and Loads and Resources Area, including necessary data gathering activities
6. Training and Education  
This category includes WECC's Training Program
7. Situational Awareness and Infrastructure Security  
This category includes WECC's Reliability Coordinator Functions

WECC shall submit its annual budget for carrying out its Delegated Authority functions and related activities as well as all other WECC activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The WECC budget submission shall include supporting materials, including WECC's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures, and how any WIRAB approved funding affects the allocation and collection of costs to WECC end users in the United States. NERC shall develop, in consultation with WECC, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. WECC shall follow NERC's prescribed system of accounts, except to the extent NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure. WECC's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted

accounting principles. NERC shall review and approve WECC's budget for meeting its responsibilities under the Delegation Agreement.

## **2. Allocation of Costs**

WECC will equitably allocate its reasonable fees and other charges for activities undertaken pursuant to the Delegation Agreement among all Load-Serving Entities (LSEs) or Balancing Authorities according to the following cost allocation rules:

1. All fees and other charges pursuant to the Delegation Agreement shall be allocated among LSEs or Balancing Authorities within the Western Interconnection on the basis of Net Energy for Load (NEL) unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement.
2. WECC will develop a list of LSEs or Balancing Authorities responsible for paying charges pursuant to the Delegation Agreement.
3. Entities on the list of LSEs or Balancing Authorities will be responsible for collection and/or payment of charges through the mechanism described in either Option 1 or 2 below. Each Balancing Authority will inform WECC by June 1<sup>st</sup> of each year of its choice of Option 1 or 2, and will give WECC at least 90 days notice of its intention to change from one option to the other.
  - a. OPTION 1 -- The Balancing Authority will provide WECC a list of all LSEs located within its area, including each LSE's name, contact information, and Net Energy for Load. This information will be updated annually and provided to WECC no later than June 1<sup>st</sup> of each year. WECC will use this list to bill each LSE for all costs on an annual basis.
  - b. OPTION 2 -- The Balancing Authority will provide WECC a list of all LSEs located within its area no later than June 1<sup>st</sup> of each year. WECC will bill the Balancing Authority for all costs on an annual basis. The Balancing Authority will be responsible for equitably allocating WECC costs among the LSEs in its area (if applicable) on the basis of Net Energy for Load, collecting the funds, and ensuring that WECC receives full payment on an annual basis.
4. WECC will submit annually to NERC an updated list of all LSEs located within the Western Interconnection.

### 3. Collection of Funding

(a) WECC will render invoices and collect funds from LSEs or Balancing Authorities within the Western Interconnection according to the following billing and collection rules:

1. WECC will send an annual invoice in a prompt and timely manner after receipt from NERC of the information needed to issue invoices, but no later than November 15<sup>th</sup> each year to each LSE or Balancing Authority (depending on the Balancing Authority's choice of Option 1 or 2 above).
2. The invoice will identify the total payment due, and will show the allocation of funds between the following three areas:
  - Electric Reliability Organization statutory costs
  - Regional Reliability Organization statutory costs
  - Western Interconnection Regional Advisory Body (WIRAB) costs
3. Payment of all invoiced amounts will be due on or before January 2nd of each year.
4. WECC will transfer collected funds to the ERO in a timely manner as follows. Once a week, until all funds are collected, WECC will electronically transfer to the ERO, in immediately available funds, all payments received from LSEs or Balancing Authorities for payment of annual invoices. In order to ensure clear communication regarding the allocation of funds, WECC will send an email to the Chief Financial Officer at the ERO outlining the breakdown of funds collected (including a listing of entities from which payments were collected, the amounts collected from each entity, and the breakdown of the total payments collected among NERC statutory funding, WECC statutory funding and WIRAB statutory funding) on the same day that WECC electronically transfers payment to the ERO.
5. WECC will exercise commercially reasonable efforts to collect invoices that are not paid on the due date(s) as follows. If WECC does not receive payment in full from an LSE or Balancing Authority by January 2nd, WECC will send the LSE or Balancing Authority a duplicate invoice together with a demand for payment within 30 days of the total due under the invoice, including statutory, and if applicable, non-statutory costs. If the LSE or Balancing Authority fails to remit payment within the additional 30 day period, the account will be turned over to the ERO for collection. WECC agrees that it shall not in any way use its position as billing and collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement program and other compliance and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of WECC's budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds

collected to NERC in an untimely manner or other than in accordance with this Agreement. To the extent WECC uses another entity as collection agent, it will incorporate these safeguards in the arrangements with the collection agent.

(b) Within three (3) business days following receipt of an electronic transfer of collected assessments from WECC in accordance with Section 3(a)(4) of this Exhibit E, NERC will electronically transfer (i) to WECC, in immediately available funds, the portion of the payment received from WECC constituting WECC statutory funding, and (ii) to WIRAB, in immediately available funds, the portion of the payment received from WECC constituting WIRAB statutory funding.

#### **4. Application of Penalties**

As part of WECC's Compliance Enforcement Program, WECC may levy monetary sanctions against an organization in the Western Interconnection. Payment of a monetary sanction is due to WECC within 30 days of the date upon which the sanction takes effect under the rules governing WECC Compliance Enforcement Program. If payment is not received on or before the applicable due date, WECC will send a demand for payment and take appropriate steps to ensure collection.

WECC will segregate any payment received from monetary sanctions in a separate accounting group and the monies will be used to offset the next year's statutory function costs. All penalty monies received by WECC, other than penalty monies received from an operational function or division or affiliated entity of WECC shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Any penalty monies received from an operational function or division or affiliated entity of WECC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### **5. Non-Statutory Activities**

WECC will identify in its annual Business Plan and Budget filing any non-statutory activity, and how WECC will maintain accounts for funding and expenses associated with all non-statutory activities that are separate from the funding and expenses associated with statutory activities. Currently, the only non-statutory activity relates to the Western Renewable Generation Information System ("WREGIS"), a system to identify and track renewable energy credits. WECC maintains separate funding mechanisms and accounts for the funding and expenses of WREGIS, and the program is currently funded through the California Energy Commission. In particular, under the *WECC Time & Expense Guidelines, Accounting for Income, Time and Expenses to Appropriate Activity Codes* (filed with NERC as part of its April 1, 2008 filing concerning the 2007 budget true-up), WECC assigns WREGIS revenues and expenses to a separate accounting code, and incorporates the separate code on

invoices, and expense reports, and for payroll. Although funds associated with statutory and non-statutory net assets are pooled, the above guidelines assure proper allocation between statutory and non-statutory accounts. WECC agrees that no costs of non-statutory activities are to be included in the calculation of WECC's dues, fees, and other charges for its activities pursuant to this Agreement. Instead, as provided in Bylaws section 12.3, any fees to fund non-statutory activities are voluntary and not a condition for membership.

\*\* If any applicable date set forth above falls on a weekend or federal holiday, then the relevant date will be the next business day.

**ATTACHMENT 6B:**

**REDLINED VERSION OF REVISED WECC  
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM  
AND HEARING PROCEDURES**

# **EXHIBIT D**



**Compliance Monitoring and Enforcement Program**

## **Western Electricity Coordinating Council**

### **Compliance Monitoring and Enforcement Program**

[Month, Day] ~~2008~~2009

| [Month, Day] ~~2008~~2009

# Compliance Monitoring and Enforcement Program

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# Compliance Monitoring and Enforcement Program

## COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

### 1.1 Definitions

- 1.1.1 Alleged Violation:** A potential violation that the Compliance Enforcement Authority has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2 Annual Audit Plan:** A plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3 Applicable Governmental Authority:** The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4 Complaint:** An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.5 Compliance Audit:** A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.6 Compliance Audit Participants:** Registered Entities scheduled to be audited and the audit team members.
- 1.1.7 Compliance Enforcement Authority:** NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.8 Compliance Violation Investigation:** A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.9 Confirmed Violation:** An Alleged Violation for which an entity has: 1) accepted the finding of the violation by a Regional Entity or NERC and

## Compliance Monitoring and Enforcement Program

will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.

- 1.1.10 Exception Reporting:** Information provided to the Compliance Enforcement Authority by a Registered Entity indicating that violations of a Reliability Standard have occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11 Mitigation Plan:** An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is usually required whenever a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, Settlement Agreement, or otherwise.
- 1.1.12 NERC Compliance Registry:** A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13 NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan:** The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14 Periodic Data Submittals:** Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15 Regional Compliance Registry:** A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC Statement of Compliance Registry Criteria of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within a Regional Entity's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16 Regional Implementation Plan:** An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance

## Compliance Monitoring and Enforcement Program

with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, that identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity's Annual Audit Plan.

- 1.1.17** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.18** Remedial Action Directive: An action (other than a penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.19** Required Date: The date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.20** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the Compliance Enforcement Authority and that are included for monitoring in the Regional Implementation Plan.
- 1.1.21** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.
- 1.1.22** Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. Spot Checking may require an on-site review to complete.

## Compliance Monitoring and Enforcement Program

### 2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

The Compliance Enforcement Authority shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. The Compliance Enforcement Authority shall identify the owners, operators, and users of the bulk power system that meet the definition of Registered Entities within the Compliance Enforcement Authority's area of responsibility. Each Registered Entity shall inform the Compliance Enforcement Authority promptly of changes to its Registration information. The Compliance Enforcement Authority shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The Compliance Enforcement Authority shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

The Compliance Enforcement Authority will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. The Compliance Enforcement Authority will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

Each Regional Entity shall develop, maintain, and provide to NERC a Regional Compliance Registry with updates as changes occur. NERC shall maintain the NERC Compliance Registry on its web site. NERC will provide FERC and any other Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction. In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. [P 30] The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard. [P 35]

## Compliance Monitoring and Enforcement Program

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

The Compliance Enforcement Authority will monitor, assess, and enforce compliance with Reliability Standards using eight (8) monitoring processes to collect information in order to make assessments of compliance: (1) Compliance Audits, (2) Self-Certifications, (3) Spot Checking, (4) Compliance Violation Investigations, (5) Self-Reporting, (6) Periodic Data Submittals, (7) Exception Reporting, and (8) Complaints. These processes are described in sections 3.1 through 3.8 below.

Enforcement actions taken by the Compliance Enforcement Authority through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

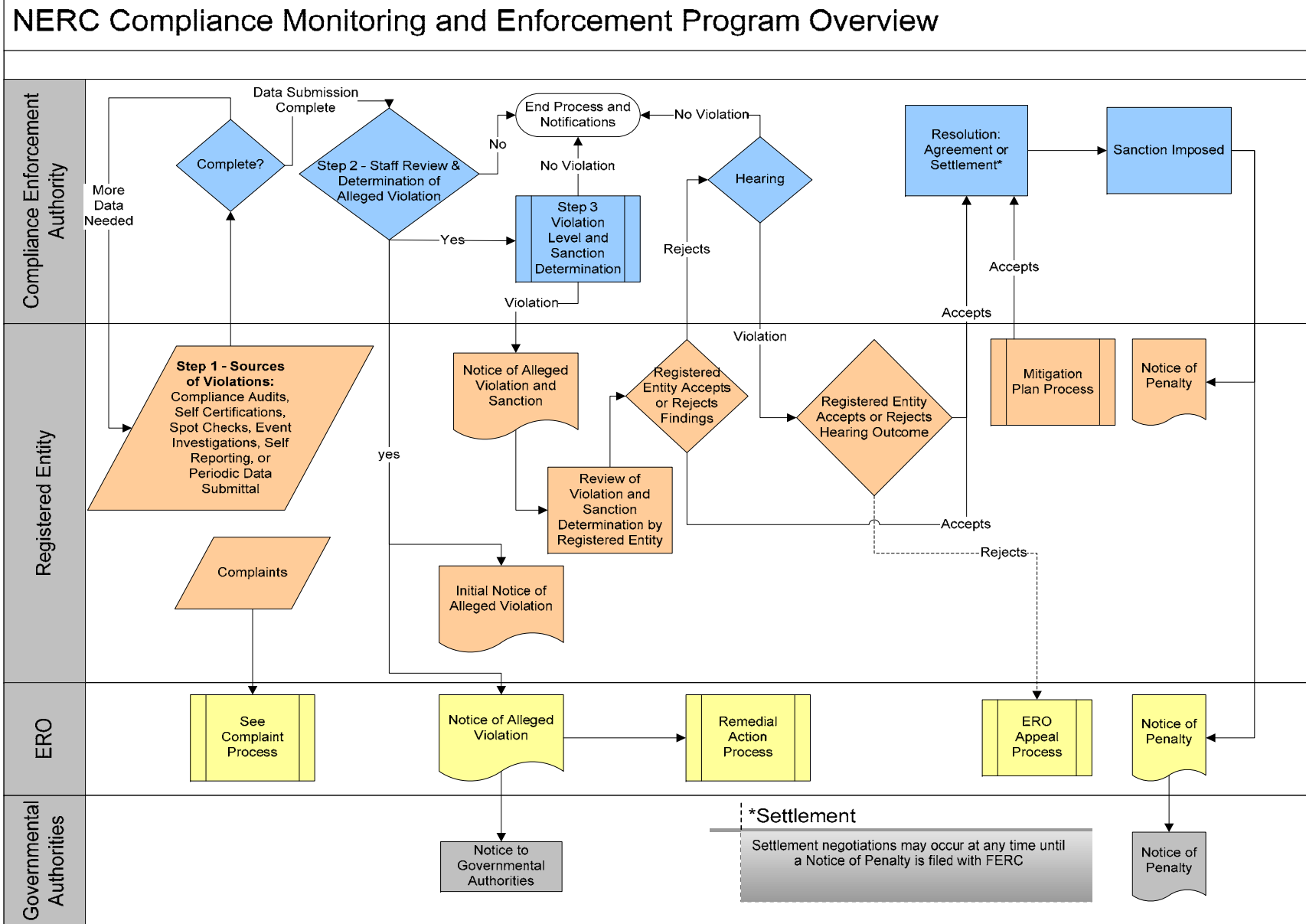
Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

**Figure 3.0 NERC Compliance Program Process** depicts the overall process steps for the Compliance Program and each of the subsequent process diagrams are either inputs to the overall process or represent an expansion of a single process (i.e., hearing process) shown on this diagram.



# Compliance Monitoring and Enforcement Program



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. . Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., including Generally Accepted ~~Accounting~~ ~~Auditing~~ [P 14 note 11] Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:<sup>1</sup>

- The Compliance Enforcement Authority distributes the Annual Audit Plan (developed in coordination with NERC) to the Compliance Audit Participants and NERC. The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including audit materials, coordinating agendas and changes to the audit schedule as required. Prior to the Compliance Audit, the Compliance Enforcement Authority informs the Registered Entity of the Reliability Standards to be evaluated. NERC or the Regional Entity provides the audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.
- At least two (2) months prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the audit, identifies the audit team members and their recent employment history, and requests data, including a completed NERC pre-audit questionnaire. If the audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the member (see Section 3.1.5).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format specified in the request.
- The audit team reviews the submitted information for conformance with the requirements of the Reliability Standards prior to performing the audit. The audit team follows NERC audit guidelines in the implementation of the audit. This shall include conducting an exit briefing with the Registered Entity, providing for a review of the audit report with the Registered Entity before it is finalized, and issuing an audit report, including an

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<sup>1</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

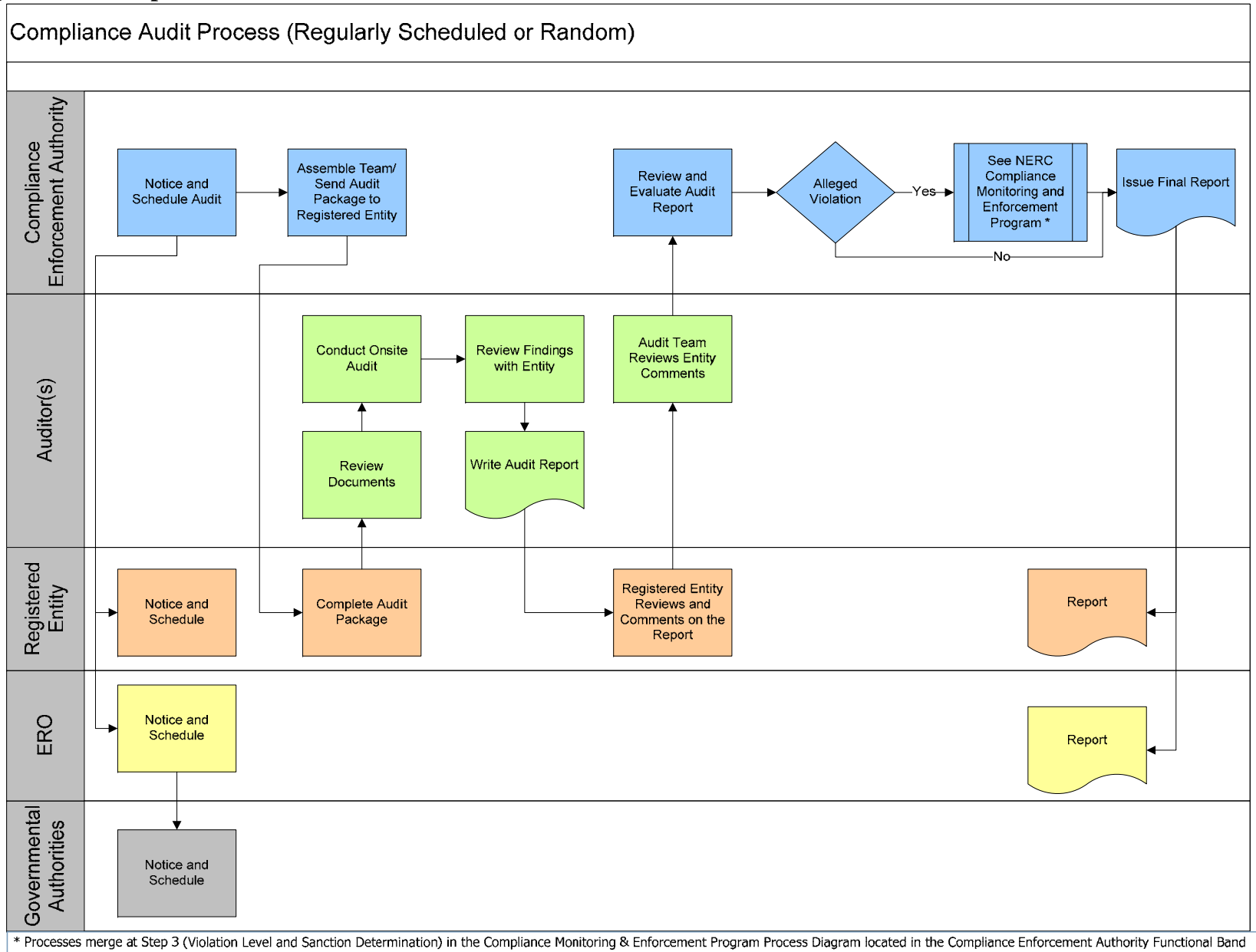
## Compliance Monitoring and Enforcement Program

assessment of compliance with the Reliability Standards to the Compliance Enforcement Authority.

- The Compliance Enforcement Authority reviews the report developed by the audit team and completes an assessment of any Alleged Violations with the Reliability Standards identified in the report.
- The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

**Figure 3.1 – Compliance Audit Process**



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule**

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to January 1 of the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year, of the audit schedules, methods, and data requirements for the audit. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities to avoid unnecessary burdens.

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

### **3.1.3 Frequency of Compliance Audits**

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure based on criteria established by NERC. Additionally, an unscheduled Compliance Audit of any Registered Entity (i) may be initiated at any time by the Compliance Enforcement Authority if reasonably determined to be necessary to ensure the Registered Entities' compliance with Reliability Standards, and (ii) shall be initiated by the Compliance Enforcement Authority or by NERC if directed by FERC. Prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated, the Compliance Enforcement Authority shall notify NERC and FERC that an unscheduled Compliance Audit is being initiated. The Registered Entity shall receive at least ten (10) business days advance notice that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team. The Registered Entity shall make any objections to the composition of the Compliance Audit team, which shall be based on failure to meet the criteria specified in Section 3.1.5, at least five (5) business days prior to the start of on-site audit work for the unscheduled Compliance Audit.

### **3.1.4 Scope of Compliance Audits**

A Compliance Audit will include all Reliability Standards applicable to the Registered Entity monitored in the NERC Implementation Plans in the current and three previous years, and may include other Reliability Standards applicable to the Registered Entity. If a Reliability Standard does not require retention of data for the full period of the Compliance Audit, the Compliance Audit will be applicable to the data retention period specified in the Reliability Standard.

### **3.1.5 Conduct of Compliance Audits**

The audit team shall be comprised of staff personnel from the Compliance Enforcement Authority and may include contractors and industry volunteers as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient audit team. The audit team

## Compliance Monitoring and Enforcement Program

leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any Regional Entity Compliance Audit team either as an observer or as an audit team member as determined by the Regional Entity. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

- Be free of conflicts of interests. For example, employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit. As a transitional matter, for Compliance Audits conducted prior to January 1, 2008, at least a majority of audit team members must have successfully completed such training.

Prior to the Compliance Audit, copies of executed confidentiality agreements or acknowledgements will be provided to the Registered Entity.

A Registered Entity subject to a Compliance Audit may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site audit work. This fifteen (15) day requirement shall not apply (i) where an audit team member has been appointed less than twenty (20) days prior to the start of on-site audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member; and (ii) in the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of start of on-site audit work for the unscheduled Compliance Audit. The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the Compliance Audit.

### 3.1.6 Compliance Audit Reports

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains

## **Compliance Monitoring and Enforcement Program**

recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards and provide the Registered Entity with a copy of the final report. Regional Entities will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to such limitations as FERC may place on such disclosure; and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission for such disclosure from the Applicable Governmental Authority with jurisdiction over the Registered Entity or the portion of the bulk power system to which such non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. The Registered Entity shall receive the final audit report at least five (5) business days prior to the release of the report to the public. Work papers and other documentation associated with the audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC requirements.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof identifying the Alleged Violation(s) and any proposed penalty or sanction(s), shall not be released to the public by NERC or the Compliance Enforcement Authority until (i) NERC submits a notice of penalty to FERC, or (ii) such Alleged Violation(s) have been admitted by the Registered Entity or resolved by a settlement with the Compliance Enforcement Authority pursuant to the provisions of Section 5.0.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as critical energy infrastructure information or confidential information (as defined in Section 1501 of the NERC Rules of Procedure) shall be redacted from any public reports.

### **3.2 Self-Certification**

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

If a Self-Certification accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check, will not subject the Registered Entity to an escalated penalty as a result of the Compliance Audit process unless the severity of the violation is found to be greater than reported by the Registered Entity in the Self-Certification.

#### **3.2.1 Self-Certification Process Steps**

## Compliance Monitoring and Enforcement Program

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**:<sup>2</sup>

- The Compliance Enforcement Authority posts and updates the reporting schedule and informs Registered Entities. The Compliance Enforcement Authority ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard (and with the Registered Entity's Mitigation Plan, if applicable). If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

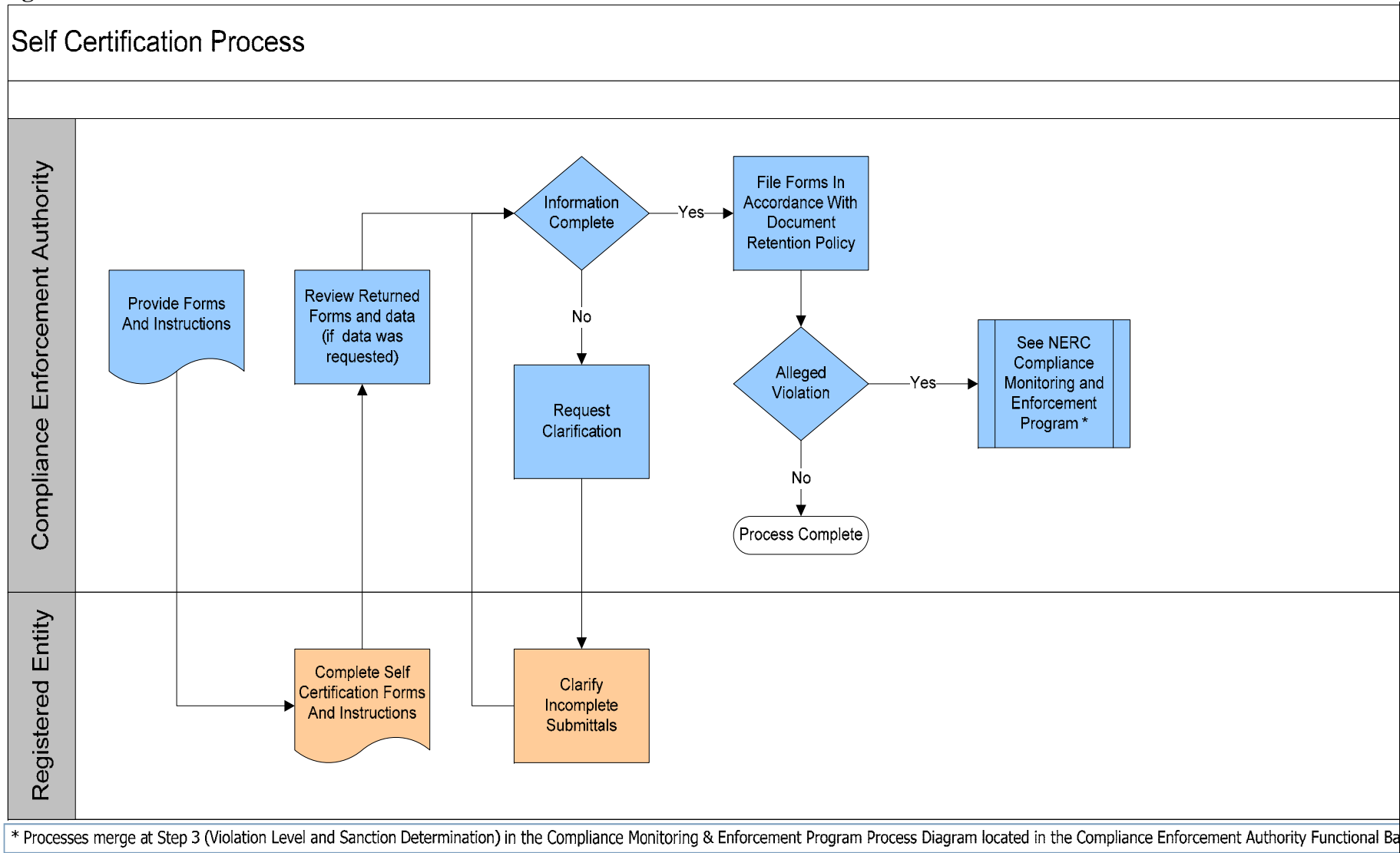
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<sup>2</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.



## Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

Spot Checking will be conducted by the Compliance Enforcement Authority. Spot Checking may be initiated by the Compliance Enforcement Authority at any time to verify or confirm Self-Certifications, Self Reporting, and Periodic Data Submittals. Spot Checking may also be random or may be initiated in response to events, as described in the Reliability Standards, or by operating problems, or system events. The Compliance Enforcement Authority then reviews the information submitted to verify the Registered Entity's compliance with the Reliability Standard. A Compliance Audit may be initiated by the Compliance Enforcement Authority as a result of a Spot Check as necessary.

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>3</sup>

- The Compliance Enforcement Authority notifies the Registered Entity that Spot Checking will be performed and the reason for the spot check within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the information to be submitted or available for review.
- The Compliance Enforcement Authority, during the advance notice period, notifies the Registered Entity of the names and employment histories of the persons who will be conducting the Spot Checking. The Registered Entity may object to inclusion of any individual on the Spot Checking team in accordance with Section 3.1.5. Any such objections must be submitted by the later of (i) five (5) business days before the information being requested by the Compliance Enforcement Authority is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Checking team. Nothing in this step shall be read to limit the participation of NERC or FERC staff on the Spot Checking Team.
- The spot check may require submission of data, documentation, or possibly an on-site review.
- The Registered Entity provides required information to the Compliance Enforcement Authority in the format specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards and may request the additional data and/or information if necessary for a complete assessment of compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Registered Entity and provides an opportunity for the Registered Entity to comment on the draft assessment.

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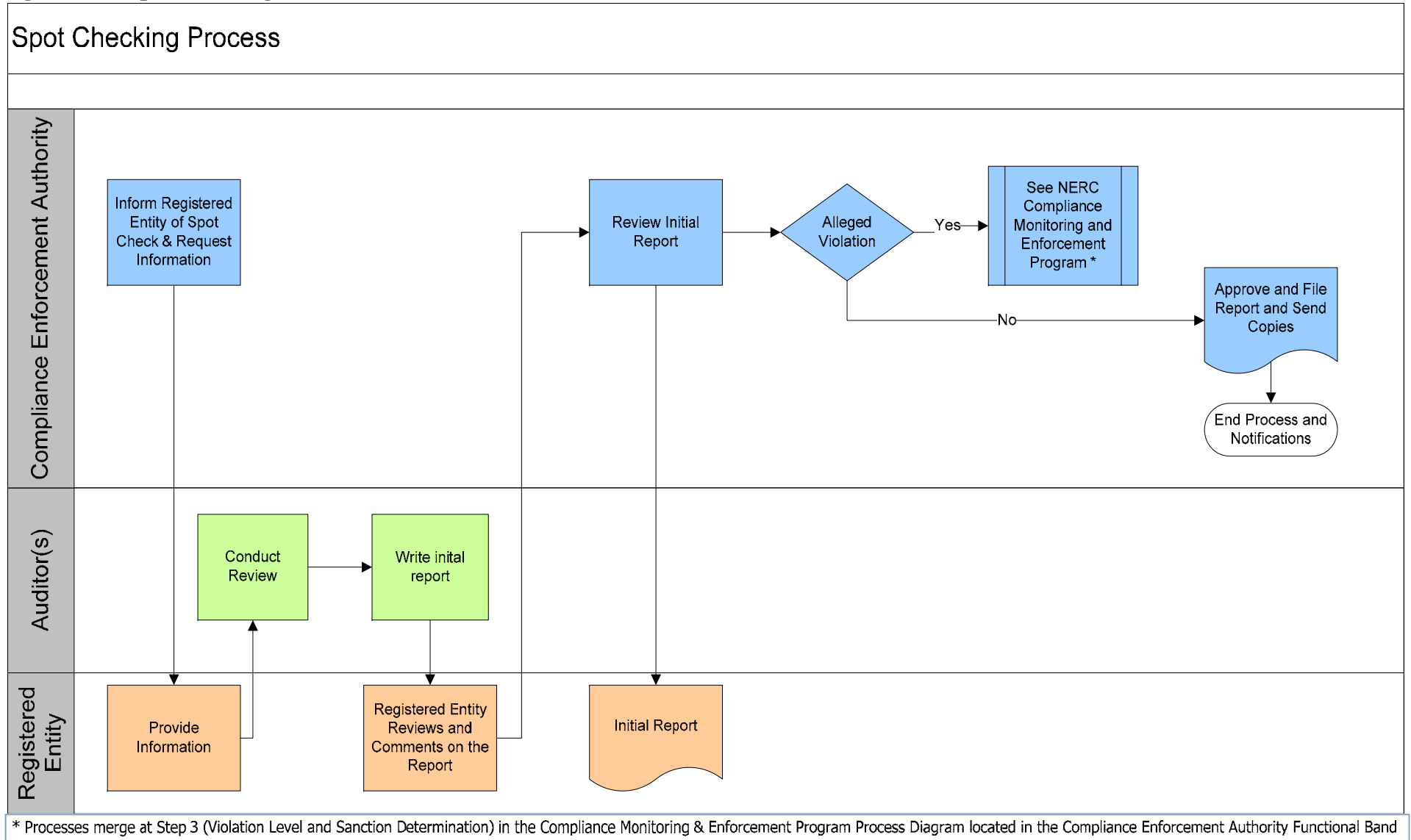
<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.

## Compliance Monitoring and Enforcement Program

- The Compliance Enforcement Authority completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides a report to the Registered Entity indicating the results of the spot check.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by the Compliance Enforcement Authority ~~or, NERC [P 32], FERC or another Applicable Governmental Authority~~ in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means. Compliance Violation Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>4</sup> The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation. Compliance Violation Investigations are confidential, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed. Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

~~FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. [P 32]~~ If an Applicable Governmental Authority other than FERC initiates an ~~investigation [P 32]~~ ~~Compliance Violation Investigation~~ of a U.S.-related matter, NERC shall provide notice to FERC of the ~~Compliance Violation Investigation~~ ~~investigation [P 32]~~ prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC ~~shall identify the other Applicable Governmental Authority, [P 30]~~ shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates an ~~Compliance Violation Investigation~~ ~~investigation [P 32]~~ of a non-U.S.-related matter, NERC shall provide notice of the ~~Compliance Violation Investigation~~ ~~investigation [P 32]~~ to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the ~~Compliance Violation Investigation~~ ~~investigation [P 32]~~ prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the ~~Compliance Violation Investigation~~ ~~investigation [P 32]~~ to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

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<sup>4</sup> Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate ~~Compliance Violation Investigations [P 32]~~ ~~investigations~~ into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:<sup>5</sup>

- The Compliance Enforcement Authority is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the Compliance Violation Investigation and, where appropriate, the reasons for the Compliance Violation Investigation, and (ii) notifies NERC of the initiation of and the reasons for the Compliance Violation Investigation. While the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for its ~~investigation~~ [Compliance Violation Investigation](#), the [Compliance Violation Investigation](#) [\[P 32\]](#), as it unfolds, need not be limited to this scope.
- NERC assigns a NERC Staff member to the Compliance Violation Investigation and to serve as a single point of contact for communications with NERC. Within two (2) business days after NERC is notified of the decision to initiate a Compliance Violation Investigation, NERC will notify each Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the bulk power system to which the Compliance Violation Investigation relates. Provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.
- The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the ~~investigation~~ [Compliance Violation Investigation](#) [\[P 32\]](#) team and their recent employment history. The Registered Entity may object to any individual on the [Compliance Violation Investigation](#) [\[P 32\]](#) team in accordance with Section 3.1.5; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority on the [Compliance Violation Investigation](#) team [\[P 32\]](#). If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.

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<sup>5</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

- Within ten (10) business days of receiving the notification of a Compliance Violation Investigation, a Registered Entity subject to an [Compliance Violation Investigation \[P 32\]](#) may object to any member of the [Compliance Violation Investigation](#) team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the [Compliance Violation Investigation \[P 32\]](#) of the Registered Entity.
- If necessary, the Compliance Violation Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information if necessary for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority may require the Registered Entity (i) to provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for documents and information; and (ii) to produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the Compliance Violation Investigation to provide testimony under oath concerning the matters under investigation.
- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard and/or approval of the applicable Mitigation Plan, writes and distributes the report, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities will notify NERC of any Alleged Violations as required by Section 8.0.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the [Compliance Violation Investigation \[P 32\]](#) has been completed. NERC will in turn notify FERC and, if the [Compliance Violation Investigation \[P 32\]](#) pertained to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Provided, however, that NERC will not disclose non-public U.S. compliance information

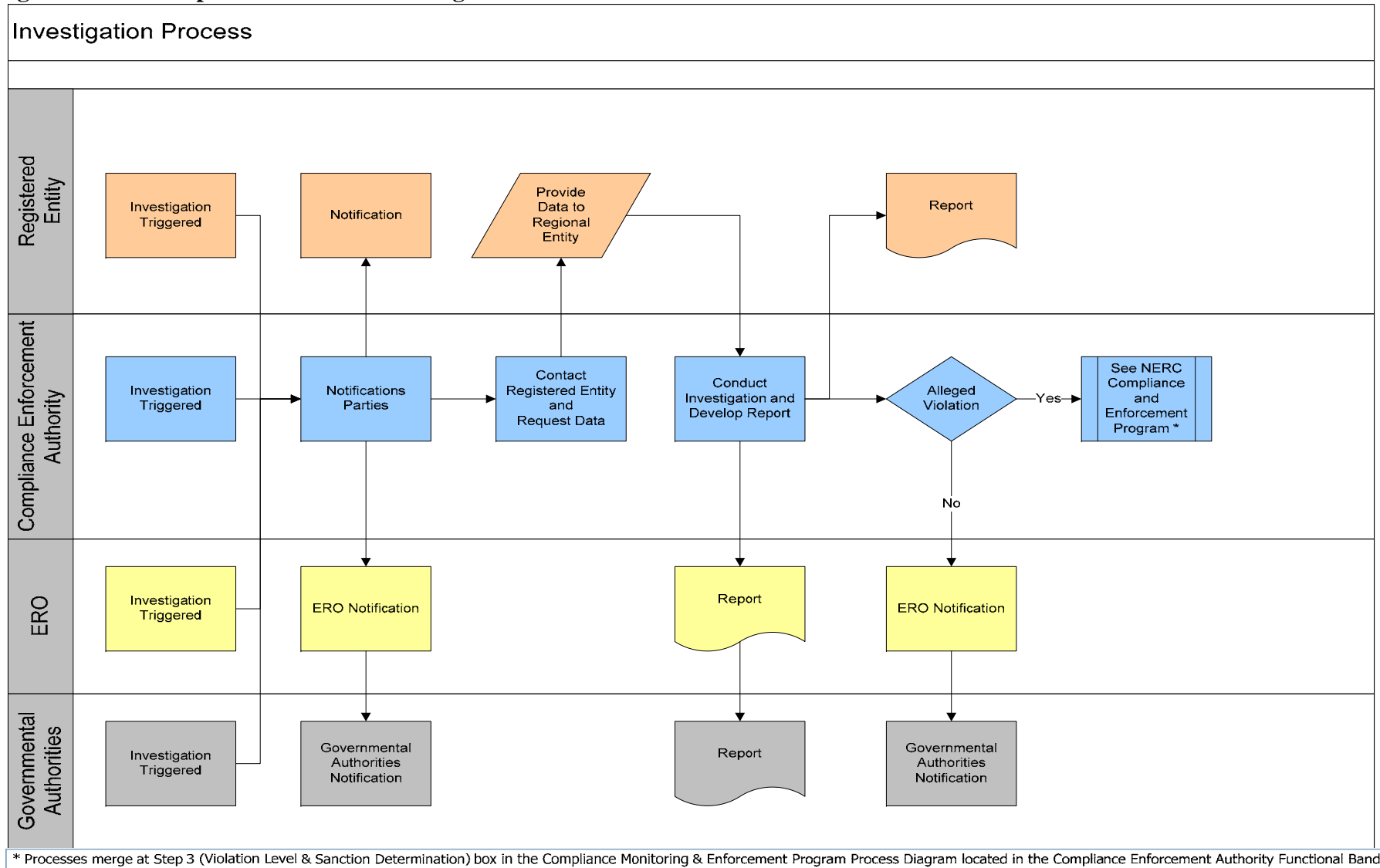
## Compliance Monitoring and Enforcement Program

that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable \_\_\_\_\_ jurisdiction.



# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

Self-Reporting is encouraged at the time a Registered Entity becomes aware (i) of a violation of a Reliability Standard or (ii) a change in the violation severity level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and the violation is determined outside the pre-defined reporting schedule.

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>6</sup>

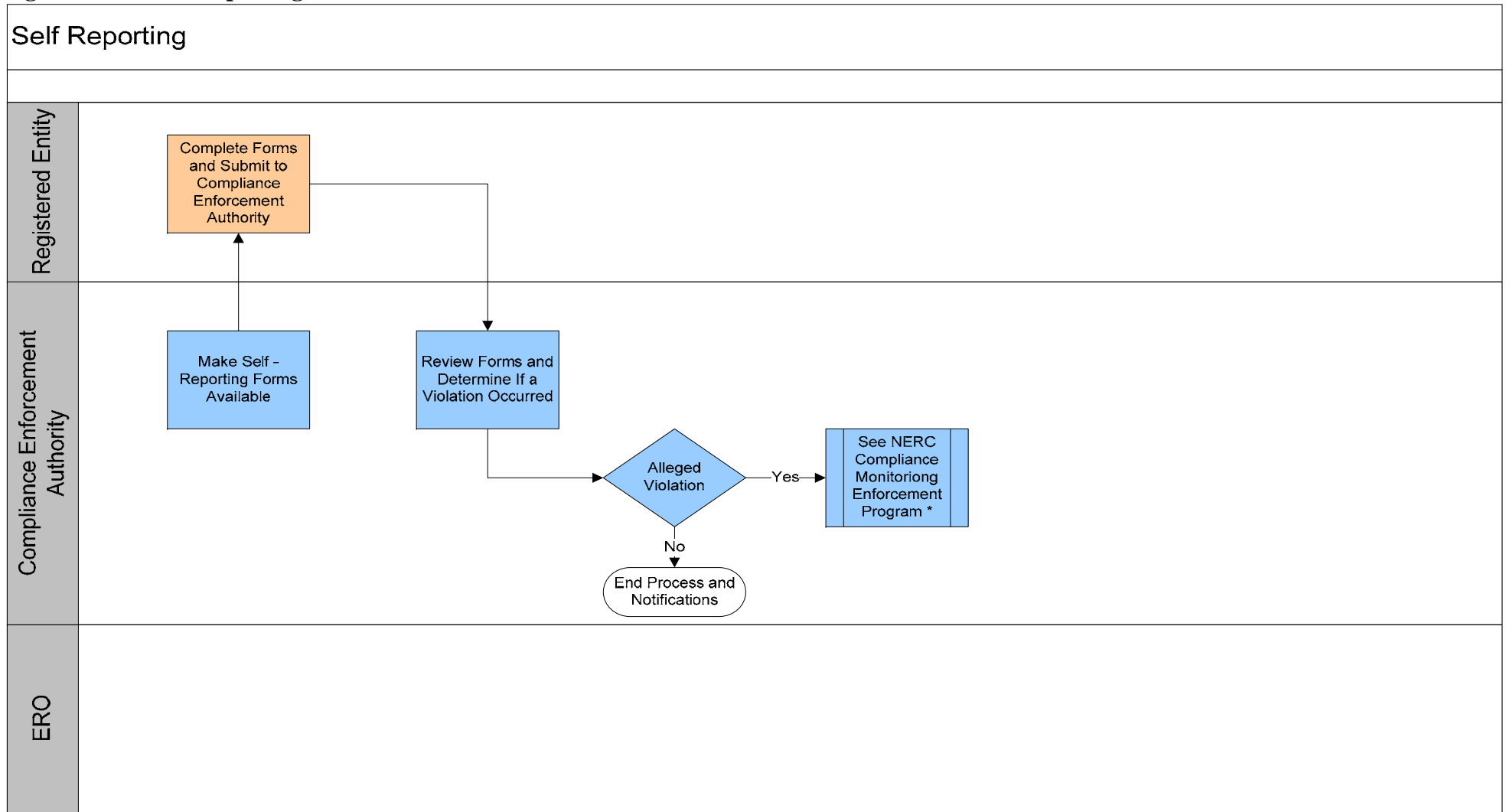
- The Compliance Enforcement Authority posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to determine compliance with the Reliability Standards and may request the Registered Entity to provide clarification or additional data and/or information.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standards and any Mitigation Plan, if applicable, and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3, Notice of Alleged Violation, of the Compliance Program Process shown in **Figure 3.0**.
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>6</sup>This process normally completes within sixty (60) days following the Compliance Enforcement Authority's receipt of data.

# Compliance Monitoring and Enforcement Program

## Figure 3.5.1 – Self Reporting Process



\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band

## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, established by the Compliance Enforcement Authority, or on an as-needed basis. Requests for data submittals will be issued by the Compliance Enforcement Authority to Registered Entities with at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the request will normally be issued with no less than twenty (20) days advance notice.

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>7</sup>

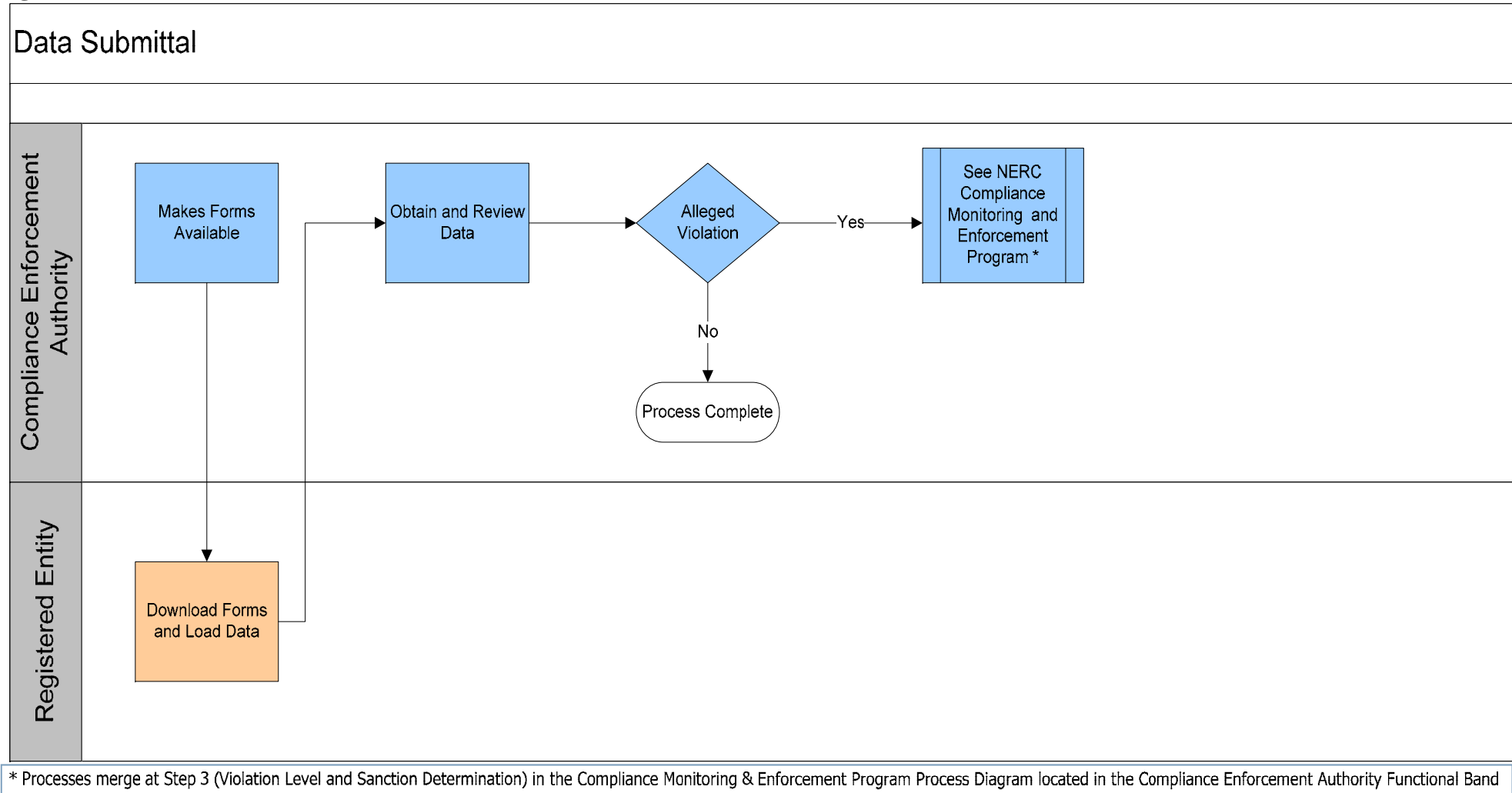
- The Compliance Enforcement Authority posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The Compliance Enforcement Authority ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained and available via its Web site.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format as specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information for a complete assessment or to demonstrate compliance.
- The Compliance Enforcement Authority reviews its draft assessment of the Registered Entity's compliance with the Reliability Standard and provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.
- The Compliance Enforcement Authority completes the assessment of the Registered Entity for compliance with the Reliability Standard and notifies the Registered Entity.
- If the Compliance Enforcement Authority concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it shall send the Registered Entity a notice containing the information set forth in Section 5.1 and the process moves to step 3 (Notice of Alleged Violation) of the Compliance Program Process shown in **Figure 3.0**
- Regional Entities notify NERC of any Alleged Violations as required by Section 8.0.

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<sup>7</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. The Compliance Enforcement Authority shall require Registered Entities to provide reports identifying any exceptions to the extent required by any Reliability Standard.

The Compliance Enforcement Authority shall also require Registered Entities to confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

### 3.8 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. A Regional Entity will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for a Compliance Violation Investigation, except that NERC will review any Complaint (1) that is related to a Regional Entity or its affiliates, divisions, committees or subordinate structures, (2) where the Regional Entity determines it cannot conduct the review, or (3) if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations conducted by NERC will be conducted in accordance with Section 3.8.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint to determine if it provides sufficient basis for a Compliance Violation Investigation. The Regional Entity will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, a Compliance Violation Investigation will be conducted in accordance with Section 3.4.

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>8</sup>

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and Regional Entity Web sites.

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<sup>8</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

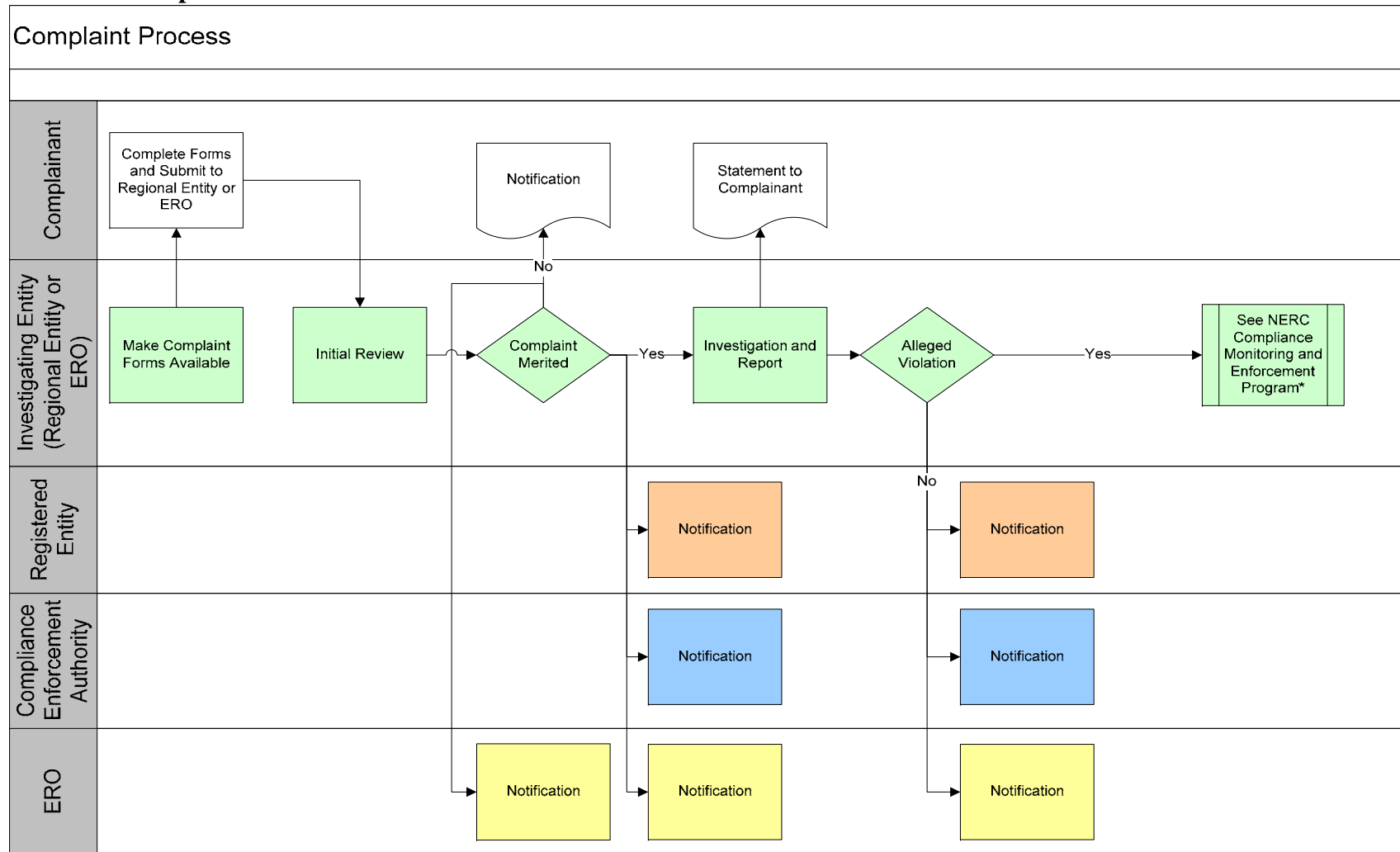
## Compliance Monitoring and Enforcement Program

The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment of whether the initiation of a Compliance Violation Investigation is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

- If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is warranted, it initiates the Compliance Violation Investigation in accordance with Section 3.4; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the Compliance Violation Investigation. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.
- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, whether a Compliance Violation Investigation is initiated or not.

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

\* Processes merge at Step 3 (Violation Level and Sanction Determination) in the Compliance Monitoring & Enforcement Program Process Diagram located in the Compliance Enforcement Authority Functional Band



## **Compliance Monitoring and Enforcement Program**

### **3.8.2 Anonymous Complainant Notification Procedure**

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>9</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting possible violations to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## **4.0 ANNUAL IMPLEMENTATION PLANS**

### **4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan**

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities by October 1 of each year and will specify the Reliability Standards requiring reporting by Registered Entities to the Compliance Enforcement Authority to provide verification of compliance through one of the monitoring methods described in this Compliance Plan document. The NERC Implementation Plan will be posted on the NERC web site.

### **4.2 Regional Entity Implementation Plan**

By November 1 of each year, Regional Entities will submit a Regional Implementation Plan for the following calendar year to NERC for approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's Web site.

## **5.0 ENFORCEMENT ACTIONS**

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC Sanction Guidelines (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the Sanction Guidelines by Regional Entities by direct oversight and review of penalties and sanctions, and each Regional Entity shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the Regional Entity.

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<sup>9</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information other than in the context of the hearing procedures is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

If the Compliance Enforcement Authority alleges that a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall provide written notice of Alleged Violation and sanction (signed by an officer or designee) to the Registered Entity (CEO or equivalent and compliance contact) and NERC. The Compliance Enforcement Authority may also issue an initial notice of Alleged Violation, without specifying the proposed penalty or sanction, to the Registered Entity. The notice of Alleged Violation and sanction shall contain, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction; and
- (vii) required procedures to submit the Registered Entity's Mitigation Plan.

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NERC shall forward a copy of the notice of Alleged Violation to FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, within two (2) business days of receipt from the Compliance Enforcement Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

### 5.2 Registered Entity Response

If the Registered Entity does not contest or does not respond to the notice of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and sanction (if applicable), in which case the Compliance Enforcement Authority shall issue to the Registered Entity and NERC a final report of Confirmed Violation. A Registered Entity may provide a written explanatory statement to accompany the final report.

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the Compliance Enforcement Authority a response explaining its position, signed by an officer employee, attorney or other authorized representative, together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made the violation will be become a Confirmed Violation when filed by NERC with FERC or other Applicable Governmental Authority.

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process by convening a hearing body and issuing a written notice of hearing to the Registered Entity and the hearing body and identifying the Compliance Enforcement Authority's designated hearing representative.<sup>10</sup>

### 5.3 Hearing Process for Compliance Hearings

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

### 5.4 Settlement Process

Settlement negotiations may occur at any time, including prior to the issuance of a notice of Alleged Violation and sanction until a notice of penalty is filed with FERC or another Applicable Governmental

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<sup>10</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the Compliance Enforcement Authority, the Registered Entity may file a request for hearing with the Compliance Enforcement Authority.

## Compliance Monitoring and Enforcement Program

Authority. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf. All settlement agreements must conform to the requirements of NERC Rule of Procedure 403.18 and, if approved, must provide for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement.

The 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 the Regional Entity and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the Regional Entity will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, [and a copy of any Mitigation Plan that is agreed to as part of the settlement.](#) [P 55] The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**.<sup>11</sup>

On appeal, NERC shall either affirm the Regional Entity decision or remand to the Regional Entity with reasons for its decision, which may include a direction to the Regional Entity to revise the decision. If NERC directs the Regional Entity to revise its decision, whichever of the Registered Entity that was the subject of the decision or the Compliance Staff of the Regional Entity whose interests are adversely

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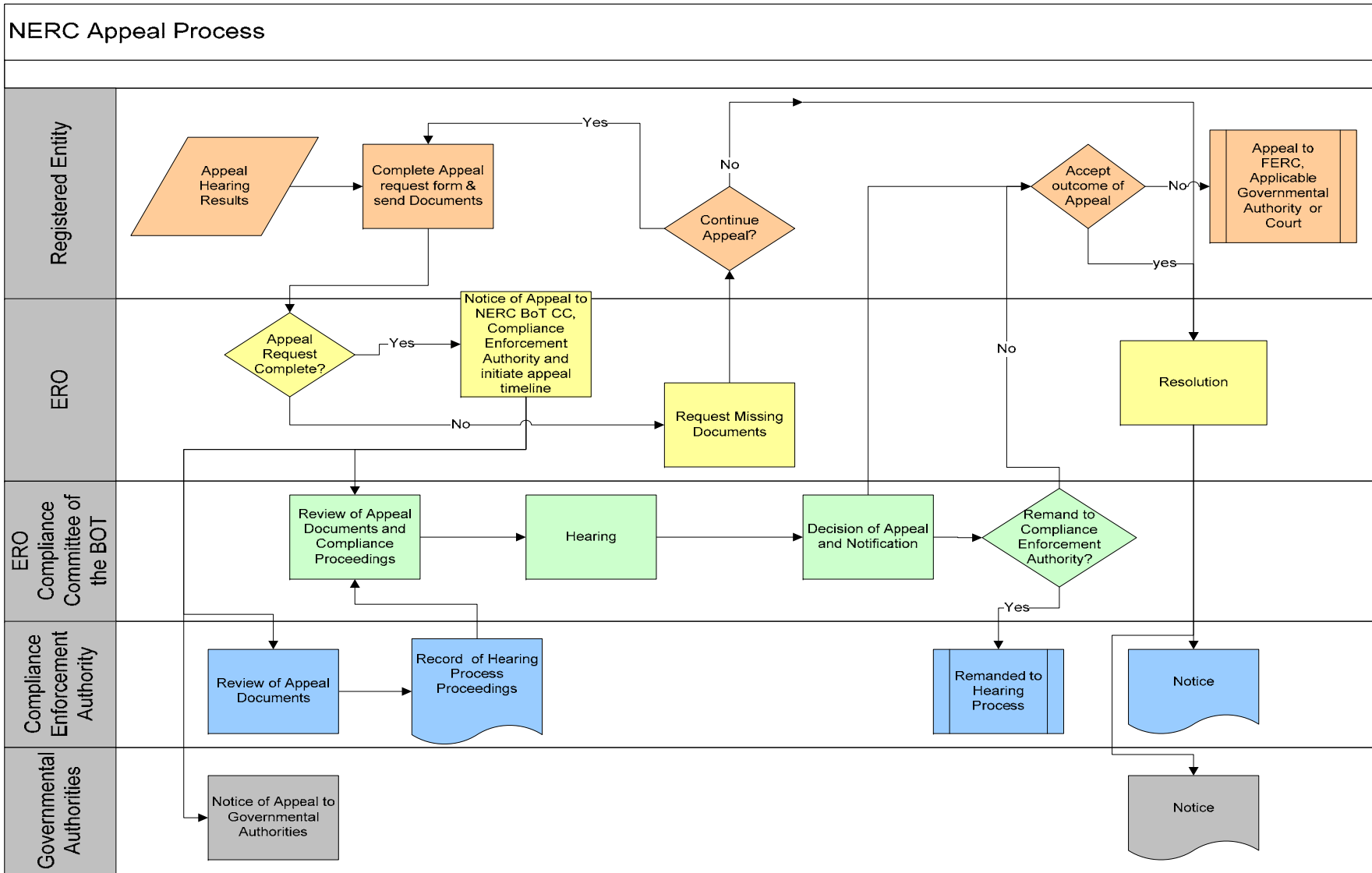
<sup>11</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

## **Compliance Monitoring and Enforcement Program**

affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

# Compliance Monitoring and Enforcement Program

## Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty; Effective Date**

If the Registered Entity does not dispute the notice of Alleged Violation and the penalty and sanction or a decision has been entered finding a violation and all appeals have been concluded, NERC shall file a notice of penalty with FERC and, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.. NERC will include with the notice of penalty any statement provided by the Registered Entity as set forth in Section 8.0. NERC may direct the Regional Entity to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the Compliance Staff of the Regional Entity, may reopen the proceedings on any issue on which the penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

The penalty or sanction will be effective upon the expiration of the thirty-day period following filing with the FERC of the notice of penalty or, if FERC decides to review the penalty or sanction, upon final determination by FERC.

## **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information other than in the context of the hearing procedures is unreasonable, the party may request a written determination from the NERC compliance program officer.

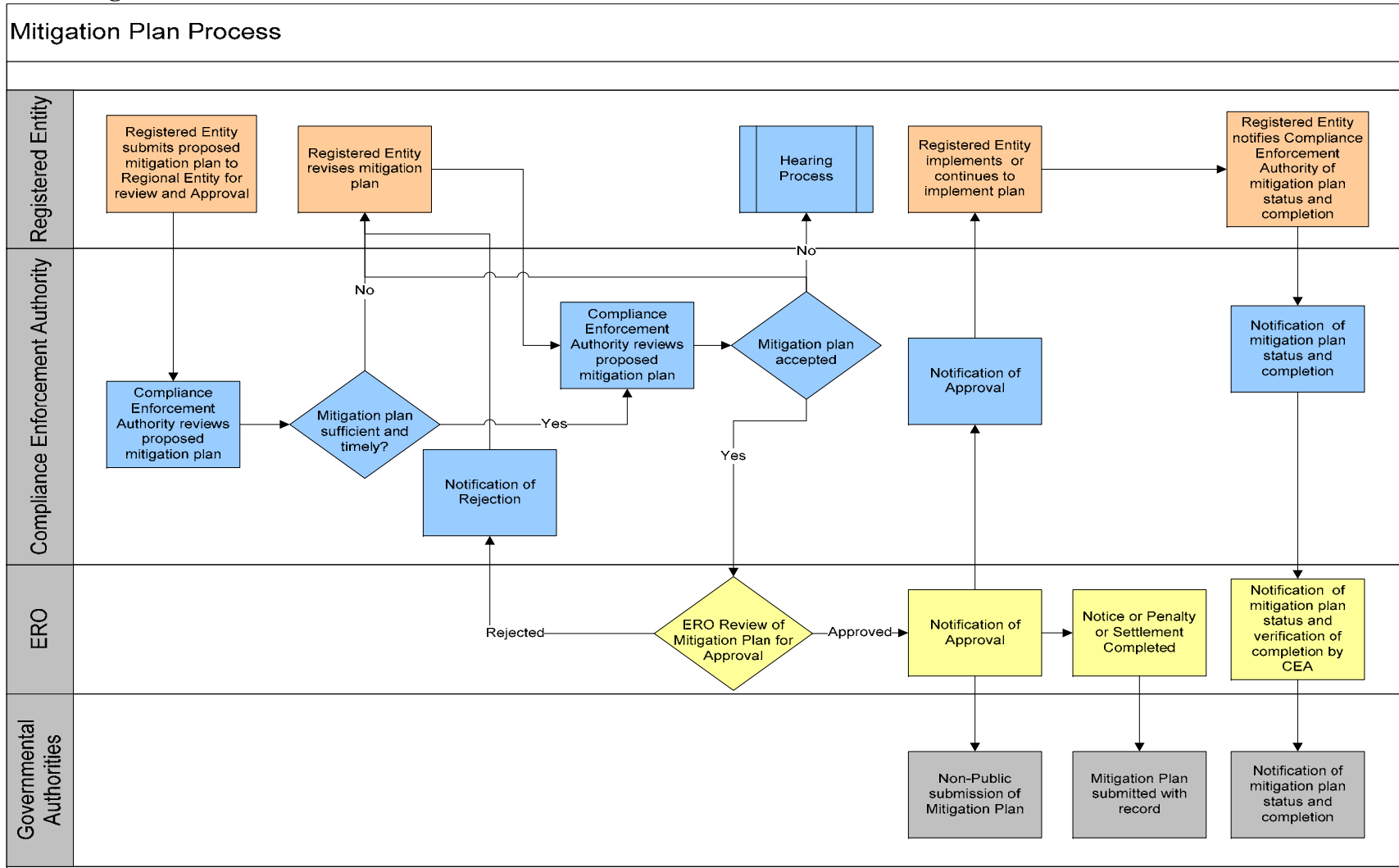
### **6.1 Requirement for Submission of Mitigation Plans**

A Registered Entity found to be in violation of a Reliability Standard that requires a mitigation plan shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation.

**Figure 6.1** shows the process steps for Mitigation Plans.

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process





## Compliance Monitoring and Enforcement Program

### 6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to prevent recurrence of the Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the bulk power system reliability and an action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission.
- Any other information deemed necessary or appropriate

The Mitigation Plan shall be signed by an officer employee, attorney or other authorized representative of the Registered Entity, which if applicable, shall be the person that signed the Self-Certification or Self Reporting submittals.

### 6.3 Timetable for Completion of Mitigation Plans

The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay. The Compliance Enforcement Authority will expect full compliance with the Reliability Standard to which the Mitigation Plan is applicable at the next report or assessment of the Registered Entity. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause including: (i) short assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that extend beyond the next assessment period or other

## Compliance Monitoring and Enforcement Program

extenuating circumstances. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the [Regional Entity acting as \[P 54\]](#) Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any penalties or sanctions imposed for such violations.

### 6.4 Submission of Mitigation Plans

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notice of Alleged Violation and penalty or sanction, if the Registered Entity does not contest the violation and penalty or sanction. If the Registered Entity disputes the notice of Alleged Violation or penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the [Regional Entity acting as \[P 54\]](#) Compliance Enforcement Authority or the hearing body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority before the hearing body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

## Compliance Monitoring and Enforcement Program

### 6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted. [P 50]

If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Regional Entities will notify NERC and the Registered Entity [P 51], within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, and will notify the Regional Entity, ~~which will in turn notify and~~ the Registered Entity [P 52], as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC. [P 54]

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC ~~may subsequently shall~~ publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with

## Compliance Monitoring and Enforcement Program

Section 8.0 [or as part of the public posting of a settlement in which the Registered Entity neither admits or denies that it violated a Reliability Standard in accordance with Section 5.4. \[P 55\].](#)

### 6.6 Completion/Confirmation of Implementation of Mitigation Plans

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during audits to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Regional Entities will provide to NERC the quarterly status reports and such other information as NERC requests, and will notify NERC when each Mitigation Plan is verified to have been completed.

### 6.7 Recordkeeping

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

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.

## Compliance Monitoring and Enforcement Program

- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

### 7.0 REMEDIAL ACTION DIRECTIVES

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify if a Remedial Action Directive obviates the need for a Mitigation Plan.

Prior to issuing a Remedial Action Directive, the Regional Entity shall consult the Reliability Coordinator for the Registered Entity, if applicable, to ensure that the Remedial Action Directive is not in conflict with directives issued by the Reliability Coordinator.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include (i) a list of the violations or possible violations of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) a deadline for compliance and (iv) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions. The Compliance Enforcement Authority will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic means to the Registered Entity's designated contact person and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The date of delivery as specified by the express courier service's verification of delivery shall be the date of actual receipt of the Remedial Action Directive. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The Regional Entity will notify NERC within two (2) business days after issuing a Remedial Action Directive.

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days

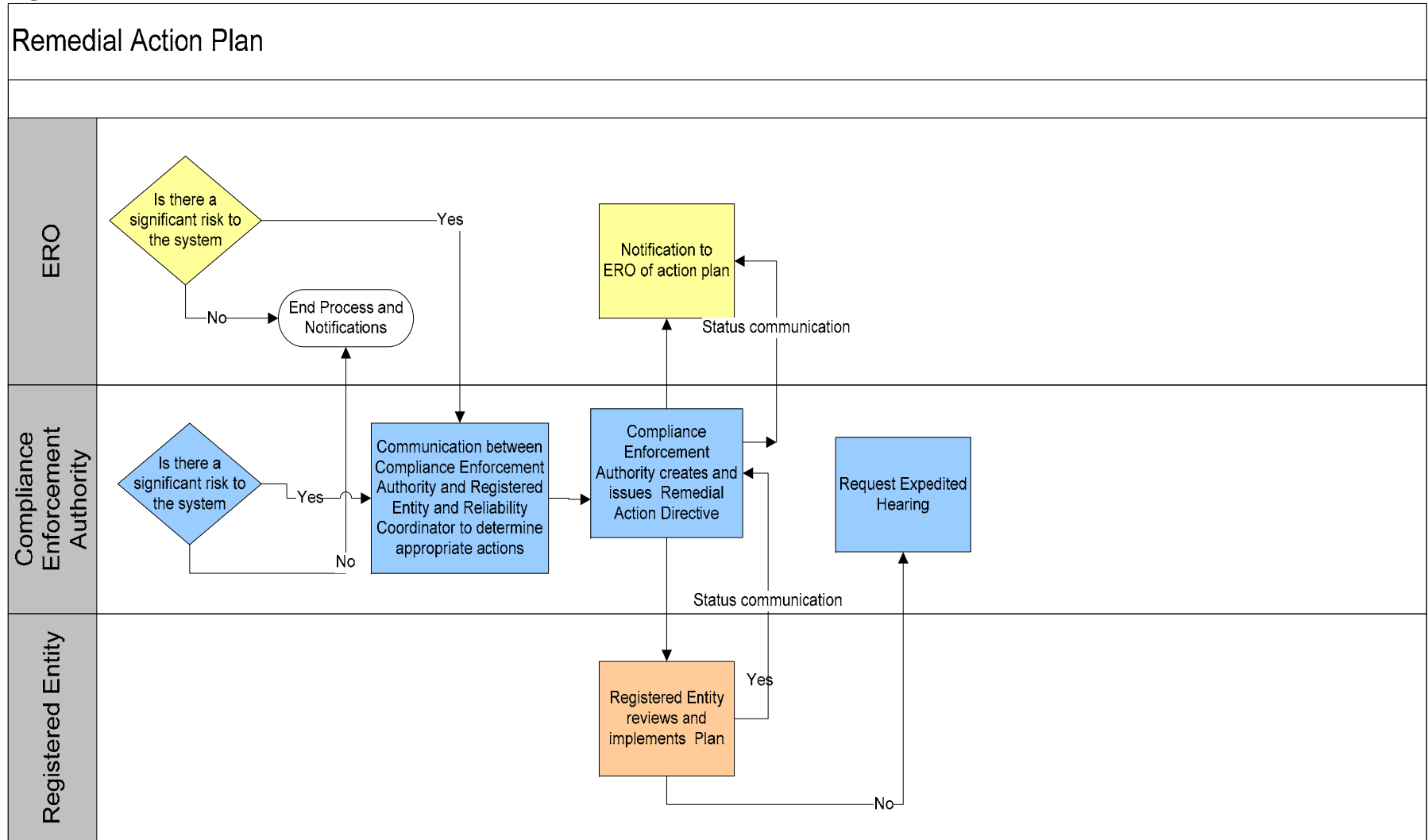
## Compliance Monitoring and Enforcement Program

following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

**Figure 7.0** shows the process steps for a Remedial Action Directive.

# Compliance Monitoring and Enforcement Program

Figure 7.0 – Remedial Action Process



## Compliance Monitoring and Enforcement Program

### 8.0 REPORTING AND DISCLOSURE

Regional Entities shall prepare and submit to NERC all required reports (including those required by NERC Rules of Procedure, Sections 403.15, 403.17 and 403.19, containing current information concerning (1) Registered Entity compliance with Reliability Standards, (2) all Alleged and Confirmed Violations of Reliability Standards by Registered Entities, (3) the status of Alleged Violations, (4) sanctions and penalties, (5) Remedial Action Directives imposed, and (6) Mitigation Plan(s) accepted including dates for all required actions and for completion.

Regional Entities shall report to NERC, on a confidential basis, any allegations or evidence of violations of Reliability Standards regardless of significance, whether verified or still under investigation that are received or obtained by the Regional Entity through any means, within five (5) business days, unless the violation indicated or alleged has resulted in or has the potential to result in, a reduced level of reliability to the bulk power system (as provided in Section 408 of the NERC Rules of Procedure), in which cases the Regional Entity shall notify NERC within forty-eight (48) hours. NERC shall notify FERC and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, shall also notify such other Applicable Governmental Authority within two (2) business days of receiving such a report from the Regional Entity; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. Such reports shall include information regarding the nature of the violation indicated or alleged and its potential impact on the reliability of the bulk power system, the name of the Registered Entity involved, the status and timetable of any compliance violation assessment, and the name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact, as required by Section 408 of the NERC Rules of Procedure and 18 C.F.R. §39.7(b)

Regional Entities shall report to NERC at least quarterly the status of violations of Reliability Standards, regardless of significance, that have not yet resulted in a final determination of violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.

Regional Entities shall report to NERC all Confirmed Violations of Reliability Standards by Registered Entities including all penalties, sanctions, Mitigation Plans and schedules, and settlements within ten (10) business days of each determination. At the same time, Regional Entities will provide the report to the affected Registered Entity, accompanied by a notice that the Registered Entity may provide a statement to NERC to accompany the report when posted by NERC. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.



## **Compliance Monitoring and Enforcement Program**

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by the Regional Entity to NERC and the Registered Entity.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authorities on the status of all Alleged and Confirmed Violations for which mitigation activities have not been completed; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will publish public reports quarterly on its Web site of all Confirmed Violations of Reliability Standards during the quarter just completed, with the identity of the violator.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to Compliance Program activities, including Compliance Audits, Self-Certifications, Spot Checking, Compliance Violation Investigations, Self-Reporting, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity

## **Compliance Monitoring and Enforcement Program**

under the Compliance Program. In providing the information and data to NERC, the Regional Entity shall preserve any mark of confidentiality.

### **9.3 Confidentiality and Critical Energy Infrastructure Information**

#### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “confidential information,” “confidential business and market information,” “critical energy infrastructure information,” and “critical infrastructure” shall have the meanings stated in Section 1501 of the NERC Rules of Procedure.

#### **9.3.2 Protection of Confidential Information**

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry volunteers) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning confidential information.

#### **9.3.3 Critical Energy Infrastructure Information**

The Compliance Enforcement Authority will keep confidential all critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be critical energy infrastructure information shall be redacted and shall not be released publicly.

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

#### PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

If data, information, or other reports (including Mitigation Plans) requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard for which the Compliance Enforcement Authority has requested data, information, or other reports. The Compliance Enforcement Authority however will afford the Registered Entity reasonable opportunity to resolve a difficulty submitting data due to time or format issues

- Step 1:**                                **The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity’s designated contact.**
- Step 2:**                                **The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity’s vice president or equivalent responsible for compliance (with a copy to NERC and the Registered Entity’s designated contact).**
- Step 3:**                                **The Compliance Enforcement Authority will issue a follow-up notification to the Registered Entity’s chief executive officer or equivalent (with a copy to NERC, the Registered Entity’s vice president or equivalent responsible for compliance and the Registered Entity’s designated contact).**
- Step 4:**                                **Thirty (30) days after the Required Date, a Reliability Standard violation may be applied at the Severe Violation Severity Level.**

**A full Compliance Audit may be scheduled at this step.**

**Step 4 does not apply to Compliance Audits and Mitigation Plan tracking requests.**

## **Compliance Monitoring and Enforcement Program**

### **ATTACHMENT 2**

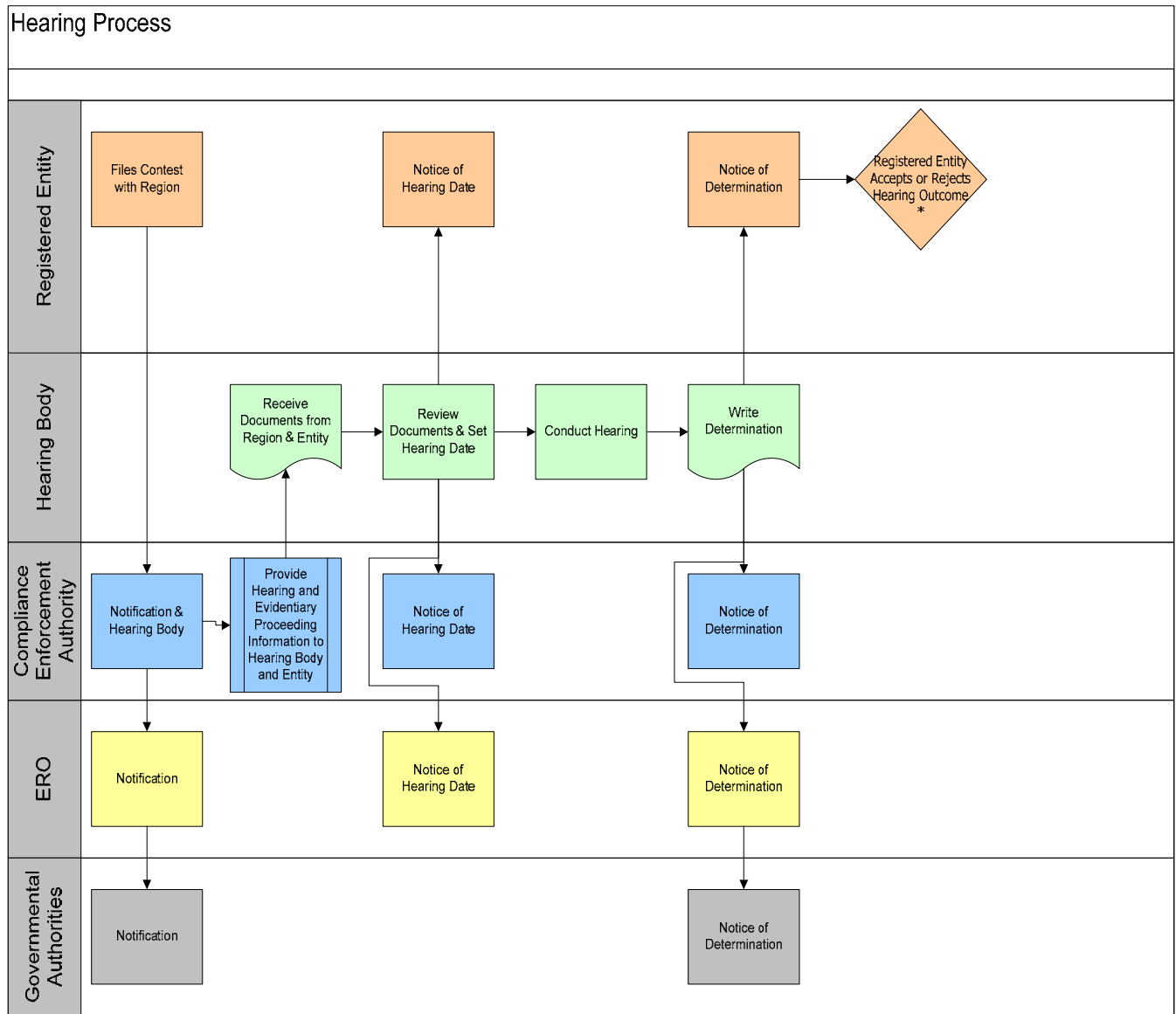
#### **COMPLIANCE ENFORCEMENT AUTHORITY HEARING PROCEDURES**

This **Attachment 2** sets forth the procedures to be followed to conduct compliance hearings. In this **Attachment 2**, the Compliance Enforcement Authority and the Registered Entity are sometimes referred to as the “parties.” Subject to the authority of the hearing body to alter or extend any time periods or deadlines specified in this **Attachment 2** and to hold such numbers of conferences and hearings as are necessary, it shall be the objective of the hearing process to complete the steps specified herein for formal compliance hearings within ninety (90) days following the issuance of written notice that the hearing body is convened.

**Figure ATT-2** shows the hearing process steps.

# Compliance Monitoring and Enforcement Program

**Figure ATT-2 –Hearing Process**



\*This merges with the Compliance Monitoring & Enforcement Program flow diagram at the Registered Entity Accepts or Rejects Hearing Outcome decision box

## 1.0 HEARING PROCEDURES

### 1.1 APPLICABILITY, DEFINITIONS AND INTERPRETATION

#### 1.1.1 Procedure Governed

These Hearing Procedures shall govern the procedure before the Western Electricity Coordinating Council (“WECC”) in proceedings concerning (i) disputes regarding whether any entity should be or has been properly registered or certified, (ii) whether Registered Entities within WECC’s area of responsibility have violated Reliability Standards, (iii) if so, to determine the appropriate Mitigation Plans, as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines

## **Compliance Monitoring and Enforcement Program**

approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), or (iv) any other dispute that relates to enforcement of reliability standards properly before the WECC.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity's Mitigation Plan, or requiring compliance with a Remedial Action Directive.

### **1.1.2 Deviation**

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer or the Hearing Panel for good cause shown, either upon the Hearing Officer's or the Hearing Panel's own motion or upon the motion of any Party.

### **1.1.3 Standards for Discretion**

These Hearing Procedures, and any discretion exercised hereunder, shall be interpreted in a manner intended to ensure just and reasonable proceedings and to effectuate the following Standards for Discretion:

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in WECC proceedings should be treated fairly. To this end, Parties should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Party that would otherwise result from another Party's failure to act diligently and in good faith.
- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Party or interest group.
- d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the conflict of interest provisions of section 1.8.4 of these Hearing Procedures.
- e) Impartiality - Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Administrative Efficiency and Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### **1.1.4 Definitions and Interpretation**

## **Compliance Monitoring and Enforcement Program**

Unless otherwise defined, capitalized terms shall have the meanings described in the WECC Compliance Monitoring and Enforcement Program. Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular. To the extent the text of a rule is inconsistent with its caption, the text of the rule shall control.

The following terms shall have the following meanings:

“Adjudicatory Officer,” means any person serving as a member of the Hearing Panel, Hearing Officer or Technical Advisor with respect to any proceeding.

“Bulk-Power System,” for the purposes of these procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk” means the person designated by WECC to receive filings and serve documents issued by or on behalf of, and otherwise provide support for, the Hearing Panel and Hearing Officer.

“Compliance Hearing Body,” is as defined in the WECC Compliance Hearing Body Charter.

“Critical Energy Infrastructure Information,” as defined in Section 1501 of the NERC Rules of Procedure.

“Critical Energy Infrastructure Information,” as defined in Section 1501 of the NERC Rules of Procedure, means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates to details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure.

“Cybersecurity Incident,” as defined in 18 C.F.R. § 39.1.

“Director of Compliance” means the Director of Compliance of WECC, who is responsible for the management and supervision of Staff.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

## **Compliance Monitoring and Enforcement Program**

“Hearing Panel” means the persons assigned to render a final decision in matters requiring a determination under these Hearing Procedures.

“NERC” means North American Electric Reliability Corporation.

“Notice of Proceeding” means (1) a request for a hearing by a Registered Entity to contest an Alleged Violation, a proposed Penalty or a Remedial Action Directive, (2) a request for hearing by a Registered Entity or the Staff concerning a dispute as to whether the entity should be registered or certified, (3) a request for hearing by a Registered Entity in response to a Staff rejection of a proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan, or (4) any other notice that a proceeding has been properly commenced.

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” has the meaning set forth in the Federal Power Act, as it may be amended from time to time.

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

“Service List,” means the list maintained by the Clerk identifying the name, address, telephone number, and facsimile number and email address, if available, of each Party, the Hearing Officer, the Director of Compliance, the Registered Entity’s designated agent for service and any other individuals designated for service by a Party.

“Staff” means individuals employed or contracted by WECC who have the authority, among other things, to make initial determinations as to need for registration, compliance or violation with Reliability Standards by Registered Entities and associated Penalties, Mitigation Plans, and Remedial Action Directives.

“WECC’s area of responsibility” means WECC’s corporate region.

### **1.2 FILING AND SERVICE**

#### **1.2.1 Form and Content of Filings**

All filings shall include (1) a caption that sets forth the title and docket number (if any) of the proceeding, (2) a heading that describes the filing and the Party on whose behalf the filing is made, (3) the name, address, telephone number and email address of the Party’s representative of the making, and (4) the service list. All filings shall be signed by an authorized representative of the Party on whose behalf the filing is made. The signature constitutes a certificate that the



## **Compliance Monitoring and Enforcement Program**

signer has read the filing, that the contents are true to the best of the signer's knowledge and belief, and that service required by these Hearing Procedures has been made. Each filing shall include a service list identifying the Parties and authorized representatives served.

All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. Typeface shall be either Arial or Times New Roman font, black type on white background, and at least 12-point (at least 10-point for footnotes). Written testimony shall include continuous line numbers on the left-hand side of each page of text. Attachments shall, whenever practical, conform to these requirements, except that any typeface shall be at least 8-point. Confidential documents shall comply with the requirements of any Protective Order issued under Section 1.10.

### **1.2.2 Submission of Filings**

The original and five copies of any filing shall be made with the Clerk of WECC during WECC business hours (0800-1630 Mountain Time) each day except Saturday, Sunday, legal holidays and any other day declared by the WECC. Filing is complete when date stamped by the Clerk or received in the electronic mail by the Clerk.

Unless as otherwise provided, a filing may be effected by electronic mail if the filed documents are in pdf format and the requisite number of copies are delivered to the Clerk's office within seven business days thereafter.

### **1.2.3 Service**

A copy of each filing must served on each person listed on the service list, by personal delivery, email (with paper copy to follow), United States mail (first class or registered) mail or deposit with an express courier service. The Clerk shall provide copies of all issuances of the Hearing Officer and Hearing Panel by similar means to each person listed on the service list and each member of the Hearing Panel, provided that the Initial and Final Decisions shall be served electronically and by certified mail on the Registered Entity and the Staff. Service is effective immediately if by personal delivery or email, upon deposit in the U.S. mail, or upon delivery to an express courier service.

### **1.2.4 Time**

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the Office of WECC is closed, in which event the last day shall be the first succeeding day that is not such a day. Any Party requesting an extension of time after the expiration of the period prescribed shall demonstrate circumstances sufficient to justify the failure to act in a timely manner. Unless otherwise provided, whenever a Party has the right or is required to do some act within a prescribed period after the service, four days shall be added to the prescribed period when served by mail and the period until the next business day shall be added if served by courier.

## **Compliance Monitoring and Enforcement Program**

### **1.3 PLEADINGS, MOTIONS AND OTHER FILINGS**

#### **1.3.1 Initiation of a Proceeding**

A proceeding is initiated by a Notice of Proceeding. Any Notice of Alleged Violation or other action triggering a right to a hearing shall clearly state (as applicable) that the Registered Entity has the right to contest proposed registration or certification, that the Registered Entity has a right to a hearing, and shall describe or include (as applicable) the alleged violation, the proposed Penalty, the Staff's rejection of the proposed Mitigation Plan, or the issuance of a Remedial Action Directive. Upon receipt of a Notice of Proceeding, the Clerk shall issue a notice of hearing, which identifies the Hearing Panel and, if applicable, the Hearing Officer assigned to the proceeding, and assigns a docket number that includes (separated by dashes) (1) the last two digits of the month and year, (2) the letters "[Regional Entity designation]", and (3) a four digit number that is assigned sequentially beginning January 1 of each year (*e.g.*, 0707-WECC-0001).

Within five business days after the issuance of a Notice of Proceeding, WECC staff shall file and serve the notice of the Alleged Violation, the sanction originally provided to the Registered Entity and copies of any documents gathered and reviewed by WECC in the course of determining an Alleged Violation has occurred and in determining the proposed sanction or penalty. Within twenty days after the issuance of the Notice of Proceeding, (1) the Registered Entity shall file (as applicable) an explanation of why the Alleged Violation is in error, why the registration determination is in error, why the proposed penalty or sanction is inappropriate and/or the Registered Entity's proposed Mitigation Plan, together with copies of all documents relied on by the Registered Entity to support its position, and (2) (if applicable) the Staff shall file its explanation why the Registered Entity's proposed Mitigation Plan was not accepted, and copies of all documents relied on by the Registered Entity to support its position.

#### **1.3.2 Amendments**

Amendments to any filings initiating a proceeding or requesting a hearing may be allowed by the Hearing Officer or the Hearing Panel upon motion made within a reasonable time after the basis for the amendment became apparent, on such terms and conditions as are deemed to be just and reasonable.

#### **1.3.3 Requirements for Motions**

Unless otherwise provided, a Party may at any time seek any relief provided for under these Hearing Procedures or otherwise applicable authority by filing a motion in writing (or orally if during a hearing). All motions shall include a plain and concise statement of any facts upon which the motion is based, citations to the record or other sources, if available, any required verification under oath by a person having knowledge of the matters set forth in the filing, a description of the specific relief sought, and the authority that supports the request for relief. Unless otherwise provided, any responses to motions shall be filed within 14 business days after service of the motion, and replies to responses shall be filed within seven business days after service of the responses.

The Hearing Panel or Hearing Officer, in their discretion, may elect to hold oral argument on any matters in dispute.

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### 1.3.4 Intervention; Consolidation of Related Proceedings

No interventions shall be permitted except upon approval of FERC. The Hearing Panel or Hearing Officer may, upon motion or their own initiative, order two or more matters partially or fully consolidated for any or all purposes if (1) events giving rise to the proceeding are the subject of another proceeding involving another Registered Entity, (2) it appears likely that consolidation is necessary to obtain all information necessary for decision and (3) reasonable procedures can be developed to prevent inappropriate disclosure of confidential information. Consolidation shall not be ordered unless all Parties in all proceedings have been provided notice and opportunity to be heard

### 1.3.5 Summary Disposition

The Hearing Panel or Hearing Officer may, upon motion or their own initiative, order summary disposition, in whole or in part, if there are no genuine issues of material fact with respect to the matters subject to summary disposition and the Party is entitled to summary disposition as a matter of law. Any factual allegations contained in a motion for Summary Disposition shall be supported by affidavit.

### 1.3.6 Interlocutory Review

Where the ruling for which interlocutory review is sought [\(1\) presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding or \(2\) involves a requirement that a non-Party produce information or testimony](#), a Party [or person subject to the ruling](#) may seek interlocutory review of any Hearing Officer ruling within 14 business days after the ruling. The Hearing Panel may affirm, reverse, remand, decline to act or take any other action on the Hearing Officer's ruling. [\[PP72-73\]](#)

### 1.3.7 Pre-Evidentiary Hearing Submission of Testimony and Evidence

With the exception of examination of an adverse [witnessParty and of testimony and documents of a non-Party subject to an order to compel](#), all witness testimony, exhibits, and any documents intended to be introduced in connection with cross-examination, shall be filed at least five business days in advance of the evidentiary hearing pursuant to a schedule adopted for the proceeding. [\[PP 72-73\]](#)

### 1.3.8 Pre-Evidentiary Hearing Memorandum

Upon request of the Hearing Officer or the Hearing Panel, the Parties may be required to submit a memorandum prior to hearing describing the Party's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. A Party will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum.

## 1.4. DOCUMENT PRODUCTION

### 1.4.1 Inspection and Copying of Documents in Possession of Staff

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

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Within five (5) business days of the initiation of the proceeding, the Staff shall make available to the Registered Entity for inspection and copying, all documents prepared by the Staff or obtained from the WECC, the Registered Entity or other sources, through or in connection with any compliance process that led to the institution of proceedings and not previously made available, including but not limited to all requests for information and responses, transcripts and transcript exhibits. Documents shall be made available during normal business hours at the WECC office where the documents are ordinarily maintained, or at such other office as the Hearing Panel or Hearing Officer, in his or her discretion, shall designate, or the Parties otherwise agree. The Registered Entity shall be responsible for the cost of photocopying, which shall be at a reasonable rate. Documents received by the Staff thereafter shall be made available to the Registered Entity within 14 business days after receipt or as soon as possible if within 14 business days of the evidentiary hearing. In cases involving more than one Party other than the Staff, the Hearing Officer or Hearing Panel shall determine the extent to which, and conditions governing the provision of, documents relating to one Party shall be made available to another Party.

### (b) Documents That May Be Withheld

The following documents are not subject to disclosure:

(1) Documents subject to a privilege available to the ~~attorney-client~~Staff or constituting attorney work-product ~~privileges of Staff's counsel~~ (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);

(2) Documents that would disclose (i) an examination, investigatory or enforcement technique or guideline of WECC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, WECC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; ~~or~~

(3) Documents containing confidential information, to the extent that disclosure would violate any applicable confidentiality requirement; or-

(4) Documents not relevant to the subject matter of the proceeding or, upon order of the Adjudicatory Officer, for other good cause shown.

Provided, however, that nothing in Subparagraphs 1.4.1(b)(2), (3), (4) authorizes Staff to withhold a document, or part thereof, that contains exculpatory evidence, and nothing in Subparagraph (b)(1) requires Staff to withhold a document from disclosure. [PP 120-21]

The Staff shall provide to the Registered Entity, at the time the documents are provided, a list of documents withheld. Upon motion based on reasonable belief of a violation of these provisions or on their own motion, the Hearing Panel or Hearing Officer may require Staff (1) to submit any

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withheld document and (2) disclose to Registered Entity any document not meeting the standards of this subsection.

### 1.4.2 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Registered Entity pursuant to Subparagraph 1.4.1(a), the Parties shall be entitled to utilize all other ~~discovery~~ methods for obtaining information provided for in Rules 402 through 409~~8~~ of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409~~8~~, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, ~~and~~ requests for admissions and orders to compel (with respect to references to subpoenas, and which may be directed to non-Party Registered Entities as well as Parties). Unless otherwise directed by the Hearing Officer or Hearing Panel upon motion by a Party or by the Hearing Officer, or by the Hearing Panel on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 408 ~~and~~ 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408 ~~and~~ 385.410 and 510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules: [PP 72, 121]

- 1) The provisions of Subparagraph 1.4.1(b) shall apply to any such discovery.
- 2) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- 3) ~~The Hearing Officer and the Hearing Panel do not have the authority to issue orders to subpoenas to, or otherwise order or compel the appearance by, or production of documents or information by, any only a pPerson or entity that is not a Party or a Registered Entity that is not a Party. The Hearing Officer and the Hearing Panel do not have authority to require a United States marshal or deputy marshal to serve any order to compel. [PP 72, 121].~~
- 3)4) A list of documents withheld shall be provided, by the deadline for production of the documents, to the Adjudicatory Officer and each Party entitled to receive the documents. [P 14 note 11]
- 4)5) References to the “Commission” in Rules 402 through 408 and 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), and the second reference in Rule 410(d) and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Panel, and (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Staff, and the reference in Rule 510(e)(3) shall be deemed to be to the Adjudicatory Officer. [PP 72-73]
- 5)6) Unless otherwise ordered by the Hearing Officer or Hearing Panel, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, or request for admissions, or order to produce or provide documents, information or testimony, shall not

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specify a due date or response date that is fewer than 21 days from the date of service of the request or the date of the order. [PP 72-73]

- 67) Unless otherwise ordered by the Hearing Officer or Hearing Panel, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraph 1.5.2.

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### 1.5 HEARINGS AND CONFERENCES

#### 1.5.1 General

The Clerk shall issue a notice for each conference and hearing, which shall identify the matter(s) to be considered, the person(s) comprising the Hearing Panel or Hearing Officer, and the date, time and place of the hearing or conference. Unless otherwise ordered, all hearings and conferences shall be held during normal business hours at the principal office of WECC. Hearings need not be held on consecutive days.

All hearings, conferences, and other meetings shall be closed to the public, and all notices, rulings, orders or any other issuances of the Hearing Officer or Hearing Panel shall be nonpublic and held in confidence by the Parties unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determines that public release is appropriate. Only the Adjudicatory Officers, representatives of the Parties, and other necessary personnel (such as court reporters) shall be allowed to participate in or obtain information relating to the proceeding.

Upon a request, the Hearing Panel or Hearing Officer may permit Parties to appear and witnesses to testify via videoconference or teleconference at any conference or hearing if necessary to avoid undue expense or undue delay in the proceeding.

All hearings and (at the discretion of the Hearing Panel or Hearing Officer) all conferences shall be transcribed verbatim by a certified court reporter. A Party may request corrections to the transcript within 35 days after receipt of the transcript and any responses shall be filed within ten business days thereafter. Each Party is responsible for the costs of a copy of any transcript ordered by it.

#### 1.5.2 Prehearing and Status Conferences

A prehearing conference shall be held within a thirty days after initiation of a proceeding, to identify issues then known to the Parties, establish a schedule and to address any other relevant

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matter. Any Party may request, and the Hearing Panel or Hearing Officer may call, a status conference at any time subsequent to the Prehearing Conference to address any issues that have arisen. The Hearing Panel or Hearing Officer may summarize actions taken in a memorandum.

### 1.5.3 Evidentiary Hearings

A Party has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts. All testimony shall be under oath.

Evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, but may be excluded if immaterial or unduly repetitious or prejudicial. The Hearing Panel or Hearing Officer may exclude material from the record only in response to a motion or objection by a Party.

Upon 14 business days' advance notice and subject to the objection by another Party, any Party may call and cross-examine as an adverse witness, any other Party, or any employee or agent thereof or Registered Entity that has been subject to an order to compel. [PP72, 121]

Upon motion, the Hearing Panel or Hearing Officer may take official notice of and the type of information any of the following:

- 1) Rules, regulations, administrative rulings and orders, and written policies of governmental bodies and Regional Entities, including WECC;
- 2) Municipal and other ordinances;
- 5) Generally recognized scientific or technical facts within the specialized knowledge of WECC;
- 4) Other facts not reasonably subject to dispute; and
- 6) All other matters of which the courts of the United States may take judicial notice.

Any document, and any item officially noticed that exists in document form, shall be introduced into the record in the form of an exhibit.

The Hearing Panel or (prior to issuance of an Initial Decision) the Hearing Officer may allow oral argument, and also may reopen the evidentiary record and hold additional hearings if warranted by any changes in fact or law since the hearing.

### 1.5.4 The Record

The record shall include the following:

- 1) The filing(s) that initiated the proceeding, responsive documents, and a list of all documents comprising the record;
- 2) Notices, rulings, orders, decisions and other issuances of the Hearing Officer and Hearing Panel;

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- 3) All motions, briefs and other filings;
- 4) All prefiled testimony, exhibits, other evidence, information excluded from evidence, transcripts and matters officially noticed;
- 5) All Notices of *ex parte* communications and any notifications of recusal and motions for disqualification of any Adjudicatory Officer and any responses or replies thereto;
- 6) The Hearing Officer's Initial Decision, and exceptions thereto; and
- 7) The Hearing Panel's Final Decision and any Notice of Penalty therewith.

### **1.5.5 Briefs and Other Post-Hearing Pleadings**

At the close of the evidentiary hearing, Parties may file initial briefs, proposed findings of fact and reply briefs. Absent good cause shown, post-hearing pleadings shall not seek to introduce additional evidence into the record after the hearing has ended.

## **1.6 DECISIONS**

### **1.6.1 Initial Decisions**

The Hearing Officer shall issue an Initial Decision that shall include (1) a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record, and (2) appropriate proposed orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. Any proposal for a Penalty shall include a proposed Notice of Penalty. The Initial Decision shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be Critical Energy Infrastructure Information protected pursuant to Paragraph 1.10. The Initial Decision shall normally be issued within thirty days following the submission of post-hearing briefs, or, if waived, following the conclusion of the hearing.

Any Party may file exceptions to the Initial Decision and replies consistent with any deadlines established in the proceeding.

### **1.6.2 Hearing Panel Final Decision**

The Hearing Panel shall issue a Final Decision following the receipt of (1) the Initial Decision, any exceptions and replies thereto, and oral argument, if any, (where a Hearing Officer has been appointed) or (2) the briefs and reply briefs (where no Hearing Officer was appointed). The Hearing Panel shall strive, but shall not be required, to issue its Final Decision within thirty (30) days after the matter is ready for decision.

In cases where a Hearing Officer is appointed, the Final Decision may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Decision shall include (1) a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record, and (2) appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. If the



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Final Decision imposes a Penalty, it shall be entitled Final Order and Notice of Penalty. The Final Order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.9.

When the Hearing Panel serves the Final Decision, it will inform the Parties of their appeal rights. The Clerk shall transmit the documents identified in Section 1.5.4, which shall constitute the record for purposes of 18 C.F.R. § 39.7(d)(5), to the ERO at the time it serves the ERO with the Final Decision.

### **1.6.3 Appeal**

A Final Decision of the Hearing Panel may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit the record of any docket to NERC that is the subject of an appealed Final Order.

### **1.6.4 Settlement**

Settlement Agreements may be entered into at any time including prior to the issuance of a Notice of Proceeding or during an appeal at the ERO, until a Notice of Confirmed Violation, Notice of Penalty, Notice of Mitigation Plan or Remedial Action Directive, whichever is applicable, is filed with the appropriate regulatory authority. All Settlement Agreements entered into prior to the issuance of a Final Decision shall be subject to approval of the Hearing Panel. Any rejected Settlement Agreement shall not be admissible into evidence and the proceedings shall continue as if the Settlement Agreement had not been filed.

## **1.7 PARTIES AND APPEARANCES**

### **1.7.1 Parties**

The Parties shall include: the Registered Entity who is subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable; the Staff and any other person allowed or required by FERC to participate as an intervenor in a proceeding conducted pursuant to these Hearing Procedures.

### **1.7.2 Appearances**

Parties shall file written appearances within seven (7) business days after service of the filing initiating the proceeding. A Party's written appearance shall identify the name(s) of each individual authorized to represent the Party in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, association, partnership or governmental body may appear by an attorney or any *bona fide* officer or designee who has the authority to act on behalf of the Party.

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

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

Any attorney appearing on behalf of a Party shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.

### **1.7.3 Confidentiality**

All participants in any proceeding before the Hearing Panel shall be take all actions necessary to be bound by confidentiality obligations consistent with NERC Rule of Procedure 1504.

## **1.8 RESPONSIBILITIES OF ADJUDICATORY OFFICERS**

### **1.8.1 Hearing Panel**

The Hearing Panel shall be selected from the Compliance Hearing Body, as provided in the WECC Compliance Hearing Body Charter, and the composition of the Hearing Panel shall assure that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Panel. The Hearing Panel is vested with all necessary the authority to preside over all matters relating to a proceeding, including the following:

1. To establish the scope of the proceeding, including segregation of issues into separate phases of the proceeding and consolidation of related proceedings;
2. Take such action as necessary to assure the confidentiality of the proceeding and documents produced in connection with the proceeding;
3. Establish and modify the schedule for the proceeding, and modify any deadline or required interval;
4. Supervise discovery and rule on any disputes relating thereto;
5. Preside over prehearing conferences, status hearings, oral arguments and evidentiary hearings, including administering oaths and affirmations, ruling on evidentiary matters, requiring the introduction of additional evidence;
6. Issue a Final Decision and rule upon all motions and all other requests for relief;
7. Take other actions necessary and appropriate for the adjudication of the proceeding.

All actions (including all rulings, orders and determinations) of the Hearing Panel shall require a quorum consisting of a majority of the persons assigned to the Hearing Panel, unless waived by the Parties in a particular circumstance, subject in all events to the requirement that no two industry segments may control, and no single industry segment may veto, Hearing Panel actions. All rulings, orders and determinations of the Hearing Panel shall require the vote of a majority of the persons constituting a quorum. Where necessary, one or more persons assigned to the Hearing Panel may participate by teleconference as long as a majority are present in person;

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provided that all persons assigned to the Hearing Panel may participate by teleconference with respect to a Remedial Action Directive hearing. All rulings, orders and determinations shall be recorded in a written ruling or in a transcript and shall be designed to promote the conduct of a full, fair and impartial proceeding and to effectuate the standards of discretion.

### **1.8.2 Hearing Officer**

WECC may designate one or more Staff members, third-party contractors, or industry stakeholders to serve as Hearing Officers and may thereby preside over any aspect of the proceeding to the same extent as the Hearing Panel, except that the Hearing Officer will issue an Initial Decision and the Final Decision or other order finally disposing of the proceeding or issues within the proceeding must be issued by the Hearing Panel.

### **1.8.3 Technical Advisor**

The Hearing Officer and/or the Hearing Panel may designate one or more Staff members, third-party contractors, or industry stakeholders to serve as Technical Advisors to assist in any proceeding by providing technical advice.

### **1.8.4 Conflict of Interest**

A person shall be disqualified from serving as an Adjudicatory Officer in any proceeding if (1) he or she has been involved in or consulted at any time in regard to any Staff investigation, initial determination of violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan relating to the proceeding or (2) his or her participation would violate WECC's applicable conflict of interest policies. An Adjudicatory Officer shall recuse himself or herself from serving in proceeding if disqualified.

Any Adjudicatory Officer shall disclose to the Service List his or her identity, employment history and professional affiliations within two business days of assignment to the proceeding.

### **1.8.5 *Ex Parte* Communications**

No Adjudicatory Officer assigned to a proceeding may communicate concerning any matter relating to the proceeding, directly or indirectly with any Person who is not an Adjudicatory Officer with respect to a proceeding, except after reasonable notice to all Parties and opportunity to participate.

Any Adjudicatory Officer who makes or receives an *ex parte* communication shall, within seven (7) business days, file and serve on the Parties a description of the date, time, place, substance of and a list of each person making or receiving the *ex parte* communication, and include any written *ex parte* communication.

### **1.8.6 Motion for Disqualification**

Any Party may move to disqualify an Adjudicatory Officer on the basis of conflict of interest, or on the basis of a prohibited *ex parte* communication or other circumstances that could interfere with the impartial performance of his or her duties. The motion shall describe the underlying facts by affidavit and shall be filed within fifteen days after the Party learns of the facts believed to constitute the basis for disqualification or reasonably in advance of any hearing, whichever is

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earlier. The ruling on a motion to disqualify an Adjudicatory Officer shall be made by the Hearing Panel, provided that the ruling on a motion to disqualify a Hearing Panel member shall be made by the Hearing Panel without participation by the member subject to the motion. Any challenge to a disqualification ruling by a Hearing Officer is waived if no interlocutory appeal has been filed within five business days of the ruling. Any disqualified Adjudicatory Officer shall be replaced as soon as practicable.

### **1.9 REMEDIAL ACTION DIRECTIVES**

#### **1.9.1 Initiation of Remedial Action Directive Hearing**

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. Notice of the Remedial Action Directive shall not be effective until actual receipt by the Registered Entity, as provided in Section 7.0 of the Compliance Monitoring and Enforcement Program. WECC will notify NERC within two (2) business days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the WECC that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following actual receipt of the Remedial Action Directive. If the Registered Entity does not give written notice to WECC within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a Notice of Hearing.

#### **1.9.2 Remedial Action Directive Procedure**

Proceedings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. All other provisions of the Hearing Procedures shall apply to the Remedial Action Directive hearing unless inconsistent with or inapplicable to the procedures set forth in this paragraph.

The Remedial Action Directive hearing will be conducted according to the following guidelines:

- a) The Hearing Panel or Hearing Officer will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference. The provisions in Section 1.4 concerning document production shall not apply.
- c) At the evidentiary hearing, Staff and the Registered Entity shall have the opportunity to present oral witness testimony and evidence, which shall be rendered under oath, and to conduct cross-examination.

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- d) At the evidentiary hearing, the Parties shall have the opportunity to make opening and closing statements, but shall not file any briefs or draft opinions, and oral argument shall not be held.
- e) The Hearing Panel shall issue a summary written decision within ten (10) business days following the hearing, stating whether the Registered Entity shall (upon receipt of the decision) or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate. In the event a Hearing Officer has been appointed, the Initial Decision will be issued within a timeframe that permits review and comment by the Parties and issuance of a summary written decision within the ten-day deadline.
- f) Within thirty (30) days following issuance of its summary written decision, the Hearing Panel shall issue a full written decision. The written decision shall state the conclusions of the Hearing Panel with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Panel's conclusions.
- g) The Final Decision may be appealed to NERC pursuant to section 1.6.3.

### **1.10. PROTECTIVE ORDERS**

- a) At any time during a proceeding, including in connection with document production under section 1.4, on the Hearing Officer's or the Hearing Panel's own motion or on the motion of any Party, an order may be entered to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Party.
- b) The following types of information will be considered entitled to protection through a Protective Order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; or (vi) investigative files that would disclose investigative techniques. Nothing in this Subparagraph shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.4.1(b)
- c) A Party submitting a motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, information or studies, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer or Hearing Panel.

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- e) The protective order shall identify the data, information or studies that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information. The order shall also specify any required indications of confidentiality, such as colored paper or notation.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Party for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer or Hearing Panel shall exclude from the hearing all individuals other than those entitled to access to the proprietary information in accordance with the protective order.