



NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Comment Period Opens for Proposed Changes to NERC Rules of Procedure and associated Appendices NERC Stakeholders

The North American Electric Reliability Corporation (NERC) is proposing changes to its Rules of Procedure and the associated Appendices 4B and 4C. The recommended revisions reflect clarifications and enhancements to the Rules based on experience gained to date by NERC and the Regional Entities in its role of electric reliability organization.

NERC is soliciting comments on proposed amendments to the NERC Rules of Procedure, Sections 100-1600; Appendix 4B – Sanction Guidelines; and Appendix 4C – Compliance Monitoring and Enforcement Program. These documents are now available at: <http://www.nerc.com/page.php?cid=1|8|169>.

Comments are due August 15, 2011, and must be submitted electronically to ROPcomments@nerc.net. NERC also intends to post a second set of revisions to the Rules of Procedure and Appendices on or before August 1, 2011 for comment. NERC intends to submit both sets of changes (as revised based on consideration of the comments received) to the NERC Board of Trustees for approval at its November 3, 2011 meeting. If approved by the Board, these revisions would then be included in one regulatory filing to be submitted to the Federal Energy Regulatory Commission for approval. Although the comment period does not close until August 15, 2011, commenters are respectfully requested to submit their comments sooner than August 15, 2011, if possible, in order to provide additional time for NERC staff and the Regional Entities to consider them.

For further information, please contact David Cook at david.cook@nerc.net

Notice of Proposed Changes to Rules of Procedure and Request for Comments

Proposed Changes to Rules of Procedure

Comments Due: August 15, 2011

The North American Electric Reliability Corporation (NERC) is proposing changes to its Rules of Procedure and the associated Appendices 4B and 4C.

NERC and the Regional Entities have identified a number of changes to various provisions of the Rules of Procedure that are appropriate to provide clarifications and enhancements, and those proposed changes are the subject of this request for comments.

Materials Included in this Request for Comments

- Summary of Proposed Rule Changes
- Redlined Text of Proposed Changes to Rules of Procedure, Sections 100 to 1600
- Redlined Text of Proposed Changes to Appendix 4B – Sanction Guidelines
- Redlined Text of Proposed Changes to Appendix 4C – Compliance Monitoring and Enforcement Program

Process

NERC's bylaws specify the procedure to be followed in making changes to NERC's Rules of Procedure. Such changes must be publicly posted for a 45-day comment period before being considered by the NERC Board of Trustees. (Bylaws, Article XI, Section 2.) Such changes must also be approved by the Federal Energy Regulatory Commission before they may take effect in the U.S. No equivalent approval is required from any ERO governmental authority in Canada. The changes, if approved, will take effect on the same date throughout the jurisdictions in which NERC operates.

NERC and the Regional Entities are still in discussion regarding certain of the proposed changes, and the final version of the revisions presented to the NERC Board of Trustees for approval will reflect the final resolution of those issues as well as any changes occasioned by the comments NERC receives in response to this posting.

Submission of Comments

Comments are due August 15, 2011, and must be submitted electronically to ROPcomments@nerc.net. NERC also intends to post a second set of revisions to the Rules of Procedure and Appendices on or before August 1, 2011 for comment. NERC intends to submit both sets of changes (as revised based on consideration of the comments received) to the NERC Board of Trustees for approval at its November 3, 2011 meeting. If approved by the Board, these revisions would then be included in one regulatory filing to be submitted to the Federal Energy Regulatory Commission for approval. Although the comment period does not close until August 15, 2011, commenters are respectfully requested to submit their comments sooner than August 15, 2011, if possible, in order to provide additional time for NERC staff and the Regional Entities to consider them.

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**Summary of Principal Proposed Changes to
NERC Rules of Procedure and
Appendices 4B and 4C**

This document provides a summary of the principal substantive proposed revisions to the NERC Rules of Procedure (ROP) Sections 100 – 1600, and Appendices 4B and 4C. This document does not provide a comprehensive listing of every proposed revision, many of which are being made for simplification of the documents, more consistent use of defined terms, moving provisions to different sections where they more logically belong and/or consolidation of material from multiple sections to one place, greater consistency among different documents that address the same topic, conforming cross references, and similar reasons.

Rules of Procedure, Sections 100-1600

With respect to the main body of Rules of Procedure, proposed revisions are included in existing Section 400, plus new Sections 412, 413 and 414; Section 807; Section 808; Section 810; Section 1401; Section 1502.1 and Section 1603. Key highlights are:

- Section 409 is revised to track changes in the NERC uniform Hearing Procedures (Appendix 4C – Compliance Monitoring and Enforcement Program (CMEP), Attachment 2) regarding the Compliance Enforcement Authority’s ability to appeal of a Regional Entity Hearing Body decision.
- New Section 412 sets forth the procedures for certification of certain questions arising in a hearing before a Regional Entity Hearing Body to the NERC Board of Trustees Compliance Committee (BOTCC) for determination, and for the BOTCC to certify such a question to itself for determination prior to completion of the Regional Entity Hearing Body proceeding.
- New Section 413 provides that NERC shall review and process all final decisions of Regional Entity Hearing Bodies concerning an alleged violation, proposed penalty or sanction, or proposed mitigation plan that are not appealed pursuant to Section 409, as though the determination had been made by the Regional Entity compliance program, and may require that the decision be modified by the Regional Entity.
- New Section 414 authorizes and establishes a procedure by which NERC may impose a monetary fine on a bulk power system (BPS) owner, operator or user for filing to submit information in a timely manner or in the form requested pursuant to specified sections of the Rules of Procedure or the CMEP.
- Section 1401 is corrected to conform to the Bylaws regarding the number of NERC members necessary to propose revisions to the Rules of Procedure.
- Corresponding to new Section 414, Sections 401.3, 403.10, 807c, 808.3, 810.4 and 1603 are revised to provide that failure to submit information in a timely manner or in the form requested by NERC or a Regional Entity pursuant to the respective section may result in imposition of a fine to the BPS owner, operator or user in accordance with Section 414.

Appendix 4B – Sanction Guidelines

In general, the revisions to Appendix 4B are for the purpose of conformity with other sections of the Rules of Procedure, to eliminate unnecessary or redundant text, and to simplify and clarify the text of this Appendix. The section of this Appendix on Remedial Action [Directives] is being deleted as it is recognized that a Remedial Action Directive is not a penalty or sanction for a violation of a Reliability Standard, but rather it is an action required to avoid an imminent or current threat to the reliability of the BPS. Additionally, corresponding to a new provision of the CMEP, the Sanction Guidelines is revised to provide that a penalty for violation of a Reliability Standard may be increased based on a Regional Entity Hearing Body's determination that the registered entity engaged in frivolous or dilatory action during the hearing.

Appendix 4C – Compliance Monitoring and Enforcement Program

With respect to the CMEP, the principal revisions include:

- The exception report monitoring method has been eliminated as a separate process, although it is noted in a new provision in Section 3.0 that recognizes some violations are identified outside of the realm of the seven specific compliance monitoring methods.
- The process steps for Compliance Audits are revised to specify that the audit notification and pre-audit questionnaire are to be sent to the registered entity at least 90 days prior to the start of the audit.
- Revisions have been made to clarify the time period in which the registered entity's compliance is to be audited in a Compliance Audit.
- Clarifications have been made regarding the persons who may be present at compliance audits and their respective roles and degrees of participation – audit team members, observers, and attendees.
- Revisions and clarifications have been made with respect to the types of responses that may be made to a Self-Certification request.
- Attachment 1, concerning non-submittal of data, information or other reports, has been simplified (reduced number of escalation steps), and now provides that a registered entity may be subject, among other actions, to the assessment of a fine if the entity fails to produce the data, information or reports that NERC or a Regional Entity requests in the compliance monitoring and enforcement process.
- Sections 3.0 and 5.0 have been revised to more clearly distinguish between the compliance monitoring process and the compliance enforcement process.
- Attachment 2, Hearing Procedures, contains significant revisions. Many of the revisions are based on experience gained and issues encountered in hearings conducted by the Regional Entities to date.
 - The Compliance Enforcement Authority is provided the right to appeal a decision of the Regional Entity Hearing Body to NERC.
 - Questions may be certified to the NERC Board of Trustees Compliance Committee for resolution in accordance with new Section 412 of the NERC Rules of Procedure.
 - A proposed penalty for violation of a Reliability Standard may be increased by the Regional Entity Hearing Body if the registered entity has

engaged in frivolous or dilatory actions during a hearing before the Hearing Body.

- A provision has been added to allow a Regional Entity Hearing Body to allow interventions in a hearing in limited, well-defined circumstances (currently, intervention is allowed only if granted by FERC).
- A number of provisions have been revised and new provisions added to specify in greater detail the procedural steps and related time periods involved in the hearing processes.

June 30, 2011

Summary of Principal Proposed Changes to NERC Rules of Procedure and Appendices 4B and 4C

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RELIABILITY CORPORATION

Proposed Revised Version – 6-29-2011 for Posting

Rules of Procedure

Effective: April 12, 2011

(plus revisions filed with FERC 2-18-11)

~~Rules of Procedure Sections 400, 800 and 1200, and Appendices 4A, 4B and 4C are subject to further revisions to comply with directives in a FERC Order issued October 21, 2010 (133 FERC ¶ 61,061).~~

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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, or 2) completed the hearing and appeals process within NERC, or 3) allowed the time for submitting an appeal to expire, or 4) admitted to the violation in a settlement agreement.

“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 classes¹ 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.

¹ 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.

- 2.3 **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.
- 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 *Standard Processes Manual*, 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 *Standard Processes Manual*. Any amendments or revisions to the *Standard Processes Manual* 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 *Standard Processes Manual* 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 *Standard Processes Manual*. 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 *Standard Processes Manual* (**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 *Standard Processes Manual* 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 *Standard Processes Manual*. 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 expedited 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. If the Board of Trustees determines that the standards process did not result in a standard that addresses a specific matter that is identified in a directive issued by an applicable ERO governmental authority, then Rule 321 of these Rules of Procedure shall apply.

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 expedited action procedures described in the *Standard Processes Manual* 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. If the Board of Trustees determines that the standards process did not result in a standard that addresses a specific matter that is identified in a directive issued by an applicable ERO governmental authority, then Rule 321 of these Rules of Procedure shall apply, with appropriate modification of the timeline.

 - 3.1 Consistent with all reliability standards developed under the expedited action process, each of the three possible follow-up actions as documented in the *Standard Processes Manual* 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 *Standard Processes Manual* 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 *Standard Processes Manual*. Consideration of the request and development of the revision shall follow the process defined in the NERC *Standard Processes Manual*. 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 *Standard Processes Manual*. 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 *Standard Processes Manual*.

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.

321. Special Rule to Address Certain Regulatory Directives

In circumstances where this Rule 321 applies, the Board of Trustees shall have the authority to take one or more of the actions set out below. The Board of Trustees shall have the authority to choose which one or more of the actions are appropriate to the circumstances and need not take these actions in sequential steps.

1. The Standards Committee shall have the responsibility to ensure that standards drafting teams address specific matters that are identified in directives issued by applicable ERO governmental authorities. If the Board of Trustees is presented with a proposed standard that fails to address such directives, the Board of Trustees has the authority to remand, with instructions (including establishing a timetable for action), the proposed reliability standard to the Standards Committee.
2. Upon a written finding by the Board of Trustees that a ballot pool has failed to approve a proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by an ERO governmental authority, the Board of Trustees has the authority to remand the proposed reliability standard to the Standards Committee, with instructions to (i) convene a public technical conference to discuss the issues surrounding the regulatory directive, including whether or not the proposed standard is just, reasonable, not unduly discriminatory or preferential, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified; (ii) working with NERC staff, prepare a memorandum discussing the issues, an analysis of the alternatives considered and other appropriate matters; and (iii) re-ballot the proposed reliability standard one additional time, with such adjustments in the

schedule as are necessary to meet the deadline contained in paragraph 2.1 of this Rule.

- 2.1 Such a re-ballot shall be completed within forty-five (45) days of the remand. The Standards Committee memorandum shall be included in the materials made available to the ballot pool in connection with the re-ballot.
- 2.2 In any such re-ballot, negative votes without comments related to the proposal shall be counted for purposes of establishing a quorum, but only affirmative votes and negative votes with comments related to the proposal shall be counted for purposes of determining the number of votes cast and whether the proposed standard has been approved.
3. If the re-balloted proposed reliability standard achieves at least an affirmative two-thirds majority vote of the weighted segment votes cast, with a quorum established, then the proposed reliability standard shall be deemed approved by the ballot pool and shall be considered by the Board of Trustees for approval.
4. If the re-balloted proposed reliability standard fails to achieve at least an affirmative two-thirds majority vote of the weighted segment votes cast, but does achieve at least a sixty percent affirmative majority of the weighted segment votes cast, with a quorum established, then the Board of Trustees has the authority to consider the proposed reliability standard for approval under the following procedures:
 - 4.1 The Board of Trustees shall issue notice of its intent to consider the proposed reliability standard and shall solicit written public comment particularly focused on the technical aspects of the provisions of the proposed reliability standard that address the specific matter identified in the regulatory directive, including whether or not the proposed standard is just, reasonable, not unduly discriminatory or preferential, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified.
 - 4.2 The Board of Trustees may, in its discretion, convene a public technical conference to receive additional input on the matter.
 - 4.3 After considering the developmental record, the comments received during balloting and the additional input received under paragraphs 4.1 and 4.2 of this Rule, the Board of Trustees has authority to act on the proposed reliability standard.

- 4.3.1 If the Board of Trustees finds that the proposed reliability standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is helpful to reliability, practical, technically sound, technically feasible, and cost-justified, then it has authority to approve the proposed reliability standard and direct that it be filed with applicable ERO governmental authorities with a request that it be made effective.
 - 4.3.2 If the Board of Trustees is unable to find that the proposed reliability standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is helpful to reliability, practical, technically sound, technically feasible, and cost-justified, then it has authority to treat the proposed reliability standard as a draft reliability standard and direct that the draft reliability standard and complete developmental record, including the additional input received under paragraphs 4.1 and 4.2 of this Rule, be filed with the applicable ERO governmental authorities as a compliance filing in response to the order giving rise to the regulatory directive, along with a recommendation that the standard not be made effective and an explanation of the basis for the recommendation.
- 5. Upon a written finding by the Board of Trustees that standard drafting team has failed to develop, or a ballot pool has failed to approve, a proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by an ERO governmental authority, the Board of Trustees has the authority to direct the Standards Committee (with the assistance of stakeholders and NERC staff) to prepare a draft reliability standard that addresses the regulatory directive, taking account of the entire developmental record pertaining to the matter. If the Standards Committee fails to prepare such draft reliability standard, the Board of Trustees may direct NERC management to prepare such draft reliability standard.
 - 5.1 The Board of Trustees may, in its discretion, convene a public technical conference to receive input on the matter. The draft reliability standard shall be posted for a 45-day public comment period.
 - 5.2 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of

Trustees finds that the draft reliability standard, with such modifications as the Board of Trustees determines are appropriate in light of the comments received, is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees has the authority to approve the draft standard and direct that the proposed standard be filed with ERO governmental authorities with a request that the proposed standard be made effective.

- 5.3 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of Trustees is unable to find that the draft reliability standard, even with modifications, is just, reasonable, not unduly discriminatory or preferential, and in the public interest, considering (among other things) whether it is practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees has the authority to direct that the draft standard and complete developmental record be filed as a compliance filing in response to the regulatory directive with the ERO governmental authority issuing the regulatory directive, with a recommendation that the draft standard not be made effective.
 - 5.4 The filing of the reliability standard under either paragraph 5.2 or paragraph 5.3 of this Rule shall include an explanation of the basis for the decision by the Board of Trustees.
 - 5.5 A reliability standard approved under paragraph 5 of this Rule shall not be eligible for submission as an American National Standard.
6. NERC shall on or before March 31st of each year file a report with applicable ERO governmental authorities on the status and timetable for addressing each outstanding directive to address a specific matter received from an applicable ERO governmental authority.

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. Failure to submit information in a timely manner or in the form requested may result in imposition of a fine to the bulk power system owner, operator or user in accordance with section 414.
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 Action Directives** — NERC and regional entities will apply penalties, sanctions, and remedial action directives that bear a reasonable relation to the seriousness of a violation and take into consideration timely remedial efforts as defined in the NERC *Sanction Guidelines*, which is 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, possible, alleged, and confirmed violations of approved reliability standards; associated penalties, sanctions, remedial action directives and settlements; and the status of mitigation actions.
10. **Confidential Information** — NERC will treat all possible and alleged violations of reliability standards and matters related to a compliance monitoring and enforcement program process, including the status of any compliance investigation or other compliance monitoring and enforcement process, as confidential in accordance with Section 1500.

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. Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident, will be identified and protected from public disclosure as critical energy infrastructure information in accordance with Section 1500.

The 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.

11. **Public Posting** — When the affected bulk power system owner, operator, or user either agrees with a possible or alleged violation(s) of a reliability standard(s) or a report of a compliance audit or compliance investigation, or enters into a settlement agreement concerning a possible or alleged violation(s), or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall, subject to the confidentiality requirements of these rules, publicly post each confirmed violation, penalty or sanction, settlement agreement, and final compliance audit or compliance investigation report, on its Web site.
 - 11.1 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.
 - 11.2 In accordance with Section 1500, information deemed by a bulk power system owner, operator, or user, regional entity, or NERC as critical energy infrastructure information (*NERC Security Guidelines for the Electricity Sector — Protecting Potentially Sensitive Information* may be used as a guide) or other confidential information shall be redacted in accordance with Section 1500 and not be released publicly.
 - 11.3 Subject to redaction of critical energy infrastructure information or other confidential information, for each confirmed violation or settlement relating to a possible violation or an alleged violation, the public posting shall include the name of any relevant entity, the nature, time period, and circumstances of such possible, alleged or confirmed violation, any

mitigation plan or other mitigating activities to be implemented by the entity in connection with the violation or settlement, and sufficient facts to assist owners, operators and users of the bulk power system to evaluate whether they have engaged in or are engaging in similar activities.

12. **Violation Information Review** — NERC compliance monitoring and enforcement program staff shall periodically review and analyze all reports of possible, alleged and confirmed violations to identify trends and other pertinent reliability issues.

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 five 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, including Appendix 4C, the delegation agreement, directives in effect pursuant to 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. In addition, audits of cross-border regional entities shall cover applicable requirements imposed on the regional entity by statute, regulation, or order of, or agreement with, provincial governmental and/or regulatory authorities for which NERC has auditing responsibilities over

the regional entity's compliance with such requirements within Canada or Mexico. Participation of a representative of an applicable ERO governmental authority shall be subject to the limitations of sections 3.1.6 and 8.0 of Appendix 4C of these rules of procedure regarding disclosures of non-public compliance information related to other jurisdictions. NERC shall maintain an audit procedure containing the requirements, steps, and timelines to conduct an audit of each regional entity compliance 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**.

- 1.4 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, which is incorporated into these rules of procedure as **Appendix 4C**. Any 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, including **Appendix 4C**, and follows the terms of the delegation agreement and the approved regional entity compliance enforcement program annual plan.
 - 2.2 NERC shall maintain a single, uniform compliance monitoring and enforcement program in **Appendix 4C** containing the procedures to ensure the consistency and fairness of the processes used to determine regional entity compliance 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 possible violations and alleged violations, according to the reporting and disclosure process in **Appendix 4C**.
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, or is about to engage in an act or practice that would result, in noncompliance with a reliability standard, where such directive is immediately necessary to protect the reliability of the bulk power system from an imminent or actual threat. 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 408-410. The process shall allow bulk power system owners, operators, and users to appeal the regional entity's findings of noncompliance and to appeal penalties, sanctions, and remedial action directive that are levied by the regional entity. Appeals beyond the NERC process will be heard by the applicable ERO 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 obtained and shared during compliance monitoring and enforcement

processes including investigations, audits, spot checks, 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 subject matter experts and regional entity members. Training for regional entity members may be delegated to the regional entity.

403. Required Attributes of Regional Entity 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 (i) conform to and comply with the NERC uniform Compliance Monitoring and Enforcement Program, **Appendix 4C** to these rules of procedure, except to the extent of any deviations that are stated in the regional entity's delegation agreement, and (ii) meet all of the attributes set forth in this Section 403.

Program Structure

1. **Independence** — Each regional entity's governance of its compliance 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 and **Appendix 4C**. These functions include but are not limited to: data gathering, data reporting, compliance 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 (i) required by statute or regulation in the applicable jurisdiction, or (ii) by agreement with express approval of NERC and of FERC or other appropriate ERO governmental authority, to another regional entity.
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, any remedial action directive, or any mitigation plan component. Compliance hearings shall be conducted in accordance with the Hearing ~~Process~~Procedures set forth in Attachment 2 to **Appendix 4C**. If a stakeholder body serves as the hearing body, no two industry sectors may control any decision and no single 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 monitoring and enforcement responsibilities, including the necessary professional staff to manage and implement the regional entity compliance monitoring and enforcement program.
6. **Regional Entity Compliance Staff Independence** — The regional entity compliance monitoring and enforcement program staff shall be capable of and required to make all determinations of compliance and noncompliance and determine penalties, sanctions, mitigating activities and remedial action directives.
 - 6.1 Regional entity compliance enforcement program staff shall not have a conflict of interest, real or perceived, in the outcome of compliance monitoring and enforcement processes, reports, or sanctions. The regional entity shall have in effect a conflict of interest policy.

- 6.2 Regional entity compliance monitoring and enforcement program staff shall have the authority and responsibility to carry out compliance monitoring and enforcement processes (with the input of industry subject matter experts), make determinations of compliance or noncompliance, and levy penalties and sanctions without interference or undue influence from regional entity members and their representative or other industry entities.
- 6.3 Regional entity compliance monitoring and enforcement program staff may call upon independent technical subject matter experts who have no conflict of interest in the outcome of the compliance monitoring and enforcement process to provide technical advice or recommendations in the determination of compliance or noncompliance.
- 6.4 Regional entity compliance monitoring and enforcement program staff shall abide by the confidentiality requirements contained in Section 1500 and **Appendix 4C** 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 Subject Matter Experts and Regional Entity Members — Industry experts and regional entity members may be called upon to provide their technical expertise in compliance monitoring and enforcement program activities.

- 7.1 The regional entity shall have procedures defining the allowable involvement of industry subject matter experts and regional entity members. The procedures shall address applicable antitrust laws and conflicts of interest.
- 7.2 Industry subject matter experts and regional entity members shall have no conflict of interest or financial interests in the outcome of their activities.
- 7.3 Regional entity members and industry subject matter experts, as part of teams or regional entity committees, may provide input to the regional entity compliance staff so long as the authority and responsibility for (i) evaluating and determining compliance or noncompliance and (ii) levying penalties, sanctions, or remedial action **directive**s shall not be delegated to any person or entity other than the compliance staff of the regional entity. Industry subject matter experts, regional entity members, or regional entity

committees shall not make determinations of noncompliance or levy penalties, sanctions, or remedial action directives. Any committee involved shall be organized so that no two industry sectors may control any decision and no single segment may veto any matter related to compliance.

- 7.4 Industry subject matter experts and regional entity members shall sign a confidentiality agreement appropriate for the activity being performed.
- 7.5 All industry subject matter experts and regional entity members participating in compliance audits and compliance investigations shall successfully complete auditor training provided by NERC or the regional entity prior to performing these activities

Program Design

- 8. **Regional Entity Compliance Enforcement Program Content** — All approved reliability standards shall be included in the regional entity compliance monitoring and 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 monitoring and 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. Failure to submit information in a timely manner or in the form requested may result in imposition of a fine to the bulk power system owner, operator or user in accordance with section 414. 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 the regional entity monitors.
 - 10.2 The regional entity or NERC has the authority to request information from bulk power system owners, operators, and users pursuant to section 401.3 or this section 403.10 without invoking a specific compliance monitoring and enforcement process in **Appendix 4C**, for purposes of determining whether to pursue one such process in a particular case and/or validating

in the enforcement phase of a matter the conclusions reached through the compliance monitoring and enforcement process(es).

- 10.3 When required or requested, the regional entities shall report information to NERC promptly and in accordance with **Appendix 4C** and other NERC procedures.
- 10.4 Regional entities shall notify NERC of all possible, alleged and confirmed violations of NERC reliability standards by entities over which the regional entity has compliance monitoring and enforcement authority , in accordance with **Appendix 4C**.
- 10.5 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 **Appendix 4C**.
- 10.6 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 monitoring and enforcement program.
- 10.7 Regional entities shall develop and implement procedures to 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 and implement a program of proactive compliance audits of bulk power system owners, operators, and users responsible for complying with reliability standards, in accordance with **Appendix 4C**. A compliance audit is a process in which a detailed review of the activities of a bulk power system owner, operator, or user is performed to determine if that bulk power system owner, operator, or user is complying with approved reliability standards.
- 11.1 For an entity registered as a balancing authority, reliability coordinator, or transmission operator, the compliance audit will be performed at least once every three years. For other bulk power system owners, operators, and users on the NERC Compliance Registry, compliance audits shall be performed on a schedule established by NERC.
- 11.2 Audits of balancing authorities, reliability coordinators, and transmission operators will include a component at the audited entity's site. For other bulk power system owners, operators, and users on the NERC Compliance Registry, the 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 monitoring and enforcement 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 to demonstrate compliance for an appropriate period prior to the compliance audit.
12. **Confidentiality of Compliance Monitoring and Enforcement Processes** — All compliance monitoring and enforcement processes, and information obtained from such processes, are to be non-public and treated as confidential in accordance with Section 1500 and **Appendix 4C** of these rules of procedure, unless NERC, the regional entity or FERC or another applicable governmental authority with jurisdiction determines a need to conduct a compliance monitoring and enforcement program process on a public basis, provided, that NERC and the regional entities shall publish (i) schedules of compliance audits scheduled in each year, (ii) a public report of each compliance audit, and (iii) notices of penalty and settlement agreements. Advance authorization from the applicable ERO governmental authority is required to make public any compliance monitoring and enforcement process or any information relating to a compliance monitoring and enforcement process, or to permit interventions when determining whether to impose a penalty. This prohibition on making public any compliance monitoring and enforcement process does not prohibit NERC or a regional entity from publicly disclosing (i) the initiation of or results from an analysis of a significant system event under Section 807 or of off-normal events or system performance under Section 808, or (ii) information of general applicability and usefulness to owners, operators, and users of the bulk power system concerning reliability and compliance matters, so long as specific allegations or conclusions regarding possible or alleged violations of reliability standards are not included in such disclosures.
13. **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.
14. **Penalties, Sanctions, and Remedial Action Directives** — Each regional entity will apply all penalties, sanctions, and remedial action directives in accordance with the approved *Sanction Guidelines*, **Appendix 4B** to these rules of procedure. Any changes to the *Sanction Guidelines* to be used by any regional entity must be approved by NERC and submitted to the appropriate ERO governmental body for approval. All confirmed violations, penalties, and sanctions, including confirmed violations, penalties and sanctions specified in a regional entity hearing body final

decision, will be provided to NERC for review and filing with applicable ERO governmental authorities as a notice of penalty, in accordance with **Appendix 4C**.

15. **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, in conformance with Attachment 2 to **Appendix 4C** to these rules of procedure and any deviations therefrom that are set forth in the regional entity's delegation agreement.. The hearing process shall allow bulk power system owners, operators, and users to contest findings of compliance violations, any penalties and sanctions that are proposed to be levied, proposed remedial action directives, and components of proposed mitigation plans. The 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 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 or a regional entity has completed the regional entity hearing process and desires to appeal the outcome of the hearing, the bulk power system owner, operator, or user or the regional entity shall appeal to NERC in accordance with Section 409 of these rules of procedure, except that a determination of violation or penalty that has been directly adjudicated by an ERO governmental authority shall be appealed with that ERO governmental authority.

16. **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 in accordance with **Appendix 4C** 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 NovemberOctober 1 of the preceding year. In conjunction with the annual implementation plan, each regional entity must report to NERC regarding how it carried out its delegated compliance monitoring and enforcement authority in the

previous year, the effectiveness of the program, and changes expected to correct any deficiencies identified. Each regional entity will provide its annual report on the schedule established by NERC, generally on or about February 15 of the following year.

404. NERC Monitoring of Compliance for Regional Entities or Bulk Power 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 subject matter experts may be used as appropriate in compliance investigations, compliance audits, and other compliance activities, subject to confidentiality, antitrust, and conflict of interest provisions.

1. **NERC Obligations** — NERC compliance monitoring and enforcement staff shall monitor the compliance of the regional entity with the reliability standards for which the regional entities are responsible, in accordance with **Appendix 4C**. NERC shall actively monitor in its annual Compliance Enforcement and Monitoring Program selected reliability standards that apply to the regional entities. NERC shall evaluate compliance and noncompliance with all of the reliability standards that apply to the regional entities and shall impose sanctions, penalties, or remedial action directives when there is a finding of noncompliance. NERC shall post all violations of reliability standards that apply to the regional entities as described in the reporting and disclosure process in **Appendix 4C**.

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 accordance with **Appendix 4C**. In such cases, NERC will serve as the Compliance Enforcement Authority described in **Appendix 4C**. Compliance matters contested by bulk power system owners, operators, and users in such an event will be heard by the NERC Compliance and Certification Committee.

2. **Compliance Audit of the Regional Entity** — NERC shall perform a compliance audit of each regional entity responsible for complying with reliability standards at least once every three years. NERC shall make an evaluation of compliance based on the information obtained through the audit. After due process is complete, the final audit report shall be made public in accordance with the reporting and disclosure process in **Appendix 4C**.
3. **Appeals Process** — Any regional entity or bulk-power system owner, operator or user found by NERC, as opposed to a regional entity, to be in noncompliance with a reliability standard may appeal the findings of noncompliance with reliability standards and any sanctions or remedial action directives that are issued by, or mitigation plan components imposed by, NERC, pursuant to the processes described in Sections 408 through 410.

405. Monitoring of 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 **Appendix 4C**. 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 in accordance with **Appendix 4C**.
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 Action Directives

1. **NERC Review of Regional Penalties and Sanctions** — NERC shall review all penalties, sanctions, and remedial action directives imposed by each regional entity for violations of reliability standards, including penalties, sanctions and remedial action directives that are specified by a regional entity hearing body final decision, to determine if the regional entity's determination is supported by a sufficient record compiled by the regional entity, is consistent with the *Sanction Guidelines* incorporated into these rules as **Appendix 4B** and with other directives, guidance and directions issued by NERC pursuant to the delegation agreement, and is consistent with penalties, sanctions and remedial action directive imposed by the regional entity and by other regional entities for violations involving the same or similar facts and circumstances.

2. **Developing Penalties and Sanctions** — The regional entity compliance monitoring and enforcement program staff shall use the *Sanction Guidelines*, which are incorporated into these rules as **Appendix 4B**, to develop an appropriate penalty, sanction, or remedial action directive for a violation, and shall notify NERC of the penalty, ~~or~~ sanction or remedial action directive.
3. **Effective Date of Penalty** — Where authorized by applicable legislation or agreement, no penalty imposed for a violation of a reliability standard shall take effect until the thirty-first day after NERC files, with the applicable 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. 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~~enforcement no later than 21 days after issuance of the notice of finding of violation or audit finding. Appeals by registered entities or regional entities of decisions of regional entity hearing bodies shall be pursuant to section 409 .
2. **Contents of Notice** — The notice of challenge shall include the full text of the decision that is being challenged, a concise statement of the error or errors contained in the decision, a clear statement of the relief being sought, and argument in sufficient detail to justify such relief.
3. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of challenge, the NERC ~~D~~irector of ~~Compliance~~enforcement 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, ~~r~~ 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~~enforcement no later than 21 days after issuance of the written decision by the Compliance and Certification Committee. The notice of appeal shall include the full text of the written decision of the Compliance and Certification Committee that is being appealed, a concise statement of the error or errors contained in the decision, a clear statement of the

relief being sought, and argument in sufficient detail to justify such relief. No factual material shall be presented in the appeal that was not presented to the Compliance and Certification Committee.

6. **Response by NERC Compliance Monitoring and Enforcement Program** — Within 21 days after receiving a copy of the notice of appeal, the NERC Compliance Monitoring and Enforcement Program staff may file its response to the issues raised in the notice of appeal, with a copy to the entity filing the notice.
7. **Reply** — The entity filing the appeal may file a reply within 7 days.
8. **Decision** — The 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.

409. Appeals from Final Decisions of Regional Entities

1. **Time for Appeal** — A compliance enforcement authority or an owner, operator or user of the bulk-power system wishing shall be entitled to appeal ~~from~~ a final decision of a regional entity hearing body concerning that finds an alleged violation of a reliability standard, a proposed or imposes a penalty or sanction for violation of a reliability standard, a proposed mitigation plan, or a proposed remedial action directive, shall file itsby filing a notice of appeal with NERC's director of enforcementcompliance, with a copycopies to the regional entity and any other participants in the regional entity hearing body proceeding, 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 investigation, compliance audit or self report, other compliance monitoring and enforcement process, 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 proceeding~~ before the regional entity hearing body.

3. **Response to Notice of Appeal by Regional Entity** — Within 21 days after ~~the date receiving a copy~~ of the notice of appeal ~~is filed~~, (i) the regional entity shall file the entire record of the ~~matter regional entity hearing body proceeding~~ with NERC’s director of ~~compliance enforcement~~, with a copy to the entity filing the notice ~~of appeal, together with~~ and (ii) ~~all participants in the proceeding before the regional entity hearing body, other than the participant filing the notice of appeal, shall file their-its~~ responses to the issues raised in the notice of appeal.
4. **Reply** — The entity filing the appeal may file a reply to the ~~responses 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 proceeding before~~ the regional entity, the responses, and any replies filed with NERC. At its discretion, the Compliance Committee may invite representatives of the entity making the appeal and the ~~other participants in the proceeding before the~~ regional entity ~~hearing body~~, 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.

410. Hold Harmless

A condition of invoking the challenge or appeals processes under Section 408 or 409 is that the entity requesting the challenge or appeal agrees that neither NERC (defined to include its members, Board of Trustees, committees, subcommittees, staff and industry subject matter experts), any person assisting in the challenge or appeals processes, nor any company employing a person assisting in the challenge or appeals processes, shall be liable, and they shall be held harmless against the consequences of 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.

411. Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards

A registered entity that is subject to a requirement of a NERC critical infrastructure protection reliability standard for which technical feasibility exceptions are permitted,

may request a technical feasibility exception to the requirement, and the request will be reviewed, approved or disapproved, and if approved, implemented, in accordance with the NERC *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standard*, Appendix 4D to these Rules of Procedure.

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

1. Certification from a Regional Entity Hearing Body

1.1 A regional entity hearing body that is conducting a hearing concerning a disputed compliance matter pursuant to Attachment 2, Hearing Procedures, of Appendix 4C, may certify to the NERC Board of Trustees, for decision, a significant question of policy or of interpretation or application of one or more reliability standard requirements, the resolution of which may be determinative of the issues in the hearing in whole or in part, in accordance with section 1.5.12 of the Hearing Procedures. All questions certified by a regional entity hearing body to the NERC Board of Trustees shall be considered and disposed of by the Compliance Committee of the Board of Trustees.

1.2 The Compliance Committee may accept or reject a certification of a question for decision. If the Compliance Committee rejects the certified question, it shall issue a written statement that the certification is rejected.

1.3 If the Compliance Committee accepts the certification of a question for decision, it shall establish a schedule by which the participants in the hearing before the regional entity hearing body may file memoranda and reply memoranda stating their positions as to how the question certified for decision should be decided by the Compliance Committee. The Compliance Committee may also request, or provide an opportunity for, either or both the NERC Compliance Monitoring and Enforcement department and the NERC General Counsel to file memoranda stating their positions as to how the question certified for decision should be decided. After receiving such memoranda and reply memoranda as are filed in accordance with the schedule, the Compliance Committee shall issue a written decision of the certified question.

1.4 Upon receiving the Compliance Committee's written decision of the certified question, the regional entity hearing body shall proceed to complete the hearing in accordance with the Compliance Committee's decision.

2. Certification by the NERC Board of Trustees Compliance Committee

2.1 The Compliance Committee of the NERC Board of Trustees may determine that a hearing pending before a regional entity hearing body

involves one or more significant questions of policy or of interpretation or application of one or more reliability standard requirements that have general importance beyond the particular dispute before the regional entity hearing body and therefore should be decided in the first instance by the Compliance Committee. The Compliance Committee may make this determination on its own motion or based on a suggestion from the NERC Compliance Monitoring and Enforcement department or the NERC General Counsel.

- 2.2 If the Compliance Committee determines that a hearing pending before a regional entity hearing body involves one or more significant questions of policy or of interpretation or application of one or more reliability standard requirements that have general importance beyond the particular dispute before the regional entity hearing body and therefore should be decided in the first instance by the Compliance Committee, the Compliance Committee shall issue a written certification to the regional entity directing that its hearing body suspend the hearing before it until the Compliance Committee decides the question or questions. The Compliance Committee's written certification shall state the specific question or questions that the Compliance Committee will decide. The hearing before the regional entity hearing body shall be suspended while the Compliance Committee considers and decides the certified question or questions.
- 2.3 As a matter of policy, questions of fact presented by the particular matter in dispute in a hearing before a regional entity hearing body should seldom, if ever, be the subject of a certification by the Compliance Committee pursuant to this subsection.
- 2.4 After the Compliance Committee issues a written certification to the regional entity in accordance with subsection 412.2.2, it shall establish a schedule by which the participants in the hearing before the regional entity hearing body may file memoranda and reply memoranda stating their positions as to how the question or questions certified by the Compliance Committee should be decided. The Compliance Committee may also request, or provide an opportunity for, either or both the NERC Compliance Monitoring and Enforcement department and the NERC General Counsel to file memoranda stating their positions as to how the question or questions certified by the Compliance Committee should be decided. After receiving such memoranda and reply memoranda as are filed in accordance with the schedule, the Compliance Committee shall issue a written decision of the certified question or questions.
- 2.5 Upon receiving the Compliance Committee's decision of the certified question or questions, the regional entity hearing body shall resume proceedings in the hearing and shall proceed to complete the hearing in accordance with the Compliance Committee's decision.

413. Review and Processing of Regional Entity Hearing Body Final Decisions that Are Not Appealed

NERC shall review and process all final decisions of regional entity hearing bodies concerning an alleged violation, proposed penalty or sanction, or proposed mitigation plan that are not appealed pursuant to section 409, as though the determination had been made by the regional entity compliance program. NERC shall review and process such final decisions, and may require that they be modified by the regional entity, in accordance with, as applicable to the particular decision, sections 5.8, 5.9 and 6.5 of Appendix 4C

414. Imposition of Fines for Failure to Provide Information Requested Pursuant to the Rules of Procedure

1. FERC's regulations at 18 C.F.R §39.2(c) provide that each user, owner or operator of the bulk power system within the United States (other than Alaska and Hawaii) shall provide FERC, the ERO and the applicable regional entity such information as is necessary to implement section 215 of the Federal Power Act as determined by FERC and set out in the rules of the ERO and each regional entity. In order to enforce this requirement, NERC or a regional entity may assess a monetary fine against any bulk power system user, owner or operator that fails to provide to NERC or the regional entity, in a timely manner and in the form requested, information requested by NERC or the regional entity pursuant to sections 401.3, 410.10, 807, 808, 810 or 1600 or Appendix 4C of these rules of procedure.
2. No fine may be assessed pursuant to this section unless NERC or the regional entity has made an initial request and at least one follow-up request for the information to the bulk power system user, owner or operator, specifying in the follow-up request a deadline by which the information must be provided to NERC or the regional entity, and the bulk power system user, owner or operator fails to provide the requested information by the stated deadline.
3. No fine assessed pursuant to this section shall exceed five thousand dollars (\$5,000) per occurrence. NERC or the regional entity shall set the specific amount of the fine based on consideration of all the facts and circumstances including the number of follow-up notifications that are sent to the bulk power system user, owner or operator and the volume, detail and complexity of the information requested.
4. If NERC or the regional entity determines that a fine should be assessed to a bulk power system user, owner or operator pursuant to this section, NERC or the regional entity shall issue a notice of proposed fine to the bulk power system user, owner or operator, stating the proposed amount of the fine, the request for information and related circumstances that have resulted in the proposed fine, and the factors that NERC or the regional entity considered in determining the amount of the proposed fine. NERC or the regional entity shall provide the bulk power

system user, owner or operator fourteen (14) days to submit a response to the notice of proposed fine stating whether the bulk power system user, owner or operator (i) accepts the proposed fine or (ii) believes no fine or a lower fine should be imposed and stating the basis for the bulk power system user, owner or operator's position.

5. If the notice of proposed fine is issued by a regional entity, the regional entity shall provide a copy of the notice to NERC, and NERC shall in turn provide a copy of the notice to FERC and to any other ERO governmental authority having reliability jurisdiction over the bulk power system user, owner or operator. If the notice of proposed fine is issued by NERC, NERC shall provide a copy of the notice to FERC and to any other ERO governmental authority having reliability jurisdiction over the bulk power system user, owner or operator.
6. A fine shall be imposed on a bulk power system user, owner or operator only by resolution of the NERC Board of Trustees or of the board of directors or other governing body of the regional entity. The NERC Board of Trustees or the board of directors or other governing body of the regional entity, as applicable, shall adopt a resolution imposing a fine on the bulk power system user, owner or operator, and stating the amount of the fine (which may be different than the amount specified in the notice of proposed fine). If such a resolution is adopted, NERC or the regional entity, as applicable, shall issue a final notice of fine to the bulk power system user, owner or operator and shall include a copy of the adopted resolution. Copies of the final notice of fine, including the adopted resolution, shall be provided to NERC and to FERC and other ERO governmental authorities in accordance with subsection 414.5.
7. The bulk power system user, owner or operator shall have thirty (30) days following the date of the final notice of fine to remit full payment of the fine to NERC or the regional entity, as applicable.

SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

501. Scope of the Organization Registration and Organization Certification Programs

The purpose of the Organization Registration Program is to clearly identify those entities that are responsible for compliance with the FERC approved reliability standards. Organizations that are registered are included on the NERC Compliance Registry (NCR) and are responsible for knowing the content of and for complying with all applicable reliability standards. Registered organizations are not and do not become members of NERC or a Regional Entity, by virtue of being listed on the NCR. Membership in NERC is governed by Article II of NERC's bylaws; membership in a Regional Entity or regional reliability organization is governed by that entity's bylaws or rules.

The purpose of the Organization Certification Program is to ensure that the new entity (i.e., applicant to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures to demonstrate their ability to meet the requirements/sub requirements of all of the reliability standards applicable to the function(s) for which it is applying thereby demonstrating the ability to become certified and then operational.

Organization Registration and Organization Certification may be delegated to Regional Entities in accordance with the procedures in this Section 500; the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into these rules as Appendix 5A; and, approved Regional Entity delegation agreements or other applicable agreements.

1. **NERC Compliance Registry** — NERC shall establish and maintain the NCR of the bulk power system owners, operators, and users that are subject to approved reliability standards.
 - 1.1 (a) The NCR shall set forth the identity and functions performed for each organization responsible for meeting requirements/sub-requirements of the reliability standards. Bulk power system owners, operators, and users (i) shall provide to NERC and the applicable Regional Entity information necessary to complete the registration, and (ii) shall provide NERC and the applicable Regional Entity with timely updates to information concerning the registered entity's ownership, operations, contact information, and other information that may affect the registered entity's registration status or other information recorded in the compliance registry.
 - (b) A generation or transmission cooperative, a joint-action agency or another organization may register as a Joint Registration Organization (JRO), in lieu of each of the JRO's members or related entities being registered individually for one or more functions. Refer to Section 507.

(c) Multiple entities may each register using a Coordinated Functional Registration (CFR) for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function pursuant to a written agreement for the division of compliance responsibility. Refer to Section 508.

- 1.2 In the development of the NCR, NERC and the Regional Entities shall determine which organizations should be placed on the NCR based on the criteria provided in the NERC *Statement of Compliance Registry Criteria* which is incorporated into these rules as Appendix 5B.
- 1.3 NERC and the Regional Entities shall use the following rules for establishing and maintaining the NCR based on the registration criteria as set forth in Appendix 5B *Statement of Compliance Registry Criteria*:
 - 1.3.1 NERC shall notify each organization that it is on the NCR. The entity is responsible for compliance with all the reliability standards applicable to the functions for which it is registered from the time it receives the registration notification from NERC.
 - 1.3.2 Any organization receiving such a notice may challenge its placement on the NCR according to the process in Appendix 5A *Organization Registration and Organization Certification Manual*, Section V.
 - 1.3.3 The Compliance Committee of the Board of Trustees shall promptly issue a written decision on the challenge, including the reasons for the decision.
 - 1.3.4 The decision of the Compliance Committee of the Board of Trustees shall be final unless, within 21 days of the date of the Compliance Committee of the Board of Trustees decision, the organization appeals the decision to the applicable governmental authority.
 - 1.3.5 Each entity identified on the NCR shall notify its corresponding Regional Entity(s) of any corrections, revisions, deletions, 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 the standards applicable to its associated registration.
- 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 unnecessary 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 entities² are under the responsibility of one and only one Reliability Coordinator.
 - 1.4.3 Ensure that all transmission facilities 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 the NCR of organizations responsible for meeting the requirements/sub-requirements of the reliability standards currently in effect on its Web site and shall update the NCR monthly.
2. **Entity Certification** — NERC shall provide for certification of all entities with primary reliability responsibilities requiring certification. This includes those entities that satisfy the criteria established in the NERC Provisional Certification Process. The NERC programs 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.
 - 2.2 Evaluate and certify each applicant's ability to meet the requirements for certification.
 - 2.3 Maintain process documentation.
 - 2.4 Maintain records of currently certified entities.
 - 2.5 Issue a certification document to the applicant that successfully demonstrates its competency to perform the evaluated functions.

² 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 responsibilities for Organization Registration and Organization 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 Organization Registration and Organization Certification Programs in accordance with such delegations to meet NERC's programs goals and requirements subject to NERC oversight.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of Organization Registration and Organization Certification within the geographic or electrical boundaries of a Regional Entity in the event that no entity is functioning as a Regional Entity for that region, or the Regional Entity withdraws as a Regional Entity, or does not operate its Organization Registration and Organization Certification Programs in accordance with delegation agreements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee the NERC Organization Registration and Organization Certification Programs activities that are delegated to each Regional Entity through a delegation agreement or other applicable agreement.
 - 3.3.1 This program shall monitor whether the Regional Entity carries out those delegated activities in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability.
 - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in the Organization Registration and Organization Certification Programs with periodic reviews of documents and records of both programs.

502. Organization Registration and Organization Certification Program Requirements

- 1. NERC shall maintain the Organization Registration and Organization Certification Programs.
 - 1.1 The roles and authority of Regional Entities in the programs are delegated from NERC pursuant to the Rules of Procedure through regional delegation agreements or other applicable agreements.
 - 1.2 Processes for the programs shall be administered by NERC and the Regional Entities. Materials that each Regional Entity uses are subject to review and approval by NERC.

- 1.3 The appeals process for the Organization Registration and Organization Certification Programs are identified in Appendix 5A *Organization Registration and Organization Certification Manual*, Sections V and VI, respectively.
- 1.4 The certification team membership is identified in Appendix 5A *Organization Registration and Organization Certification Manual*, Section IV.8.d.
2. To ensure consistency and fairness of the Organization Registration and Organization Certification Programs, NERC shall develop procedures to be used by all Regional Entities and NERC in accordance with the following criteria:
 - 2.1 NERC and the Regional Entities shall have data management processes and procedures that provide for confidentiality, integrity, and retention of data and information collected.
 - 2.2 Documentation used to substantiate the conclusions of the Regional Entity/ NERC related to registration and/or certification must be retained by the Regional Entity for (6) six years, unless a different retention period is otherwise identified, for the purposes of future audits of these programs.
 - 2.3 To maintain the integrity of the NERC Organization Registration and Organization Certification Programs, NERC, Regional Entities, certification team members, program audit team members (Section 506), and committee members shall maintain the confidentiality of information provided by an applicant or entities.
 - 2.2.1 NERC and the Regional Entities shall have appropriate codes of conduct and confidentiality agreements for staff, certification team, certification related committees, and certification program audit team members.
 - 2.2.2 NERC, Regional Entities, certification team members, program audit team members and committee members shall maintain the confidentiality of any registration or certification-related discussions or documents designated as confidential (see Section 1500 for types of confidential information).
 - 2.2.3 NERC, Regional Entities, certification team members, program audit team members and committee members shall treat as confidential the individual comments expressed during evaluations, program audits and report-drafting sessions.
 - 2.2.4 Copies of notes, draft reports, and other interim documents developed or used during an entity certification evaluation or program audit shall be destroyed after the public posting of a final, uncontested report.

2.2.5 Information deemed by an applicant, entity, a Regional Entity, or NERC as confidential, including critical energy infrastructure information, shall not be released publicly or distributed outside of a committee or team.

2.2.6 In the event that an individual violates any of the confidentiality rules set forth above, that individual and any member organization with which the individual is associated will 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.

2.2.7 NERC shall develop and provide training in auditing skills to all individuals prior to their participation in certification evaluations. Training for certification team leaders shall be more comprehensive than the training given to industry subject matter experts and Regional Entity members. Training for Regional Entity members may be delegated to the Regional Entity.

2.4 An applicant 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 for which it has demonstrated full competency.

2.4.1 All NERC certified entities shall be included on the NCR.

503. Regional Entity Implementation of Organization Registration and Organization 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 Organization Certification to the Regional Entity through a delegation agreement.

2. **Registration** — The following Organization Registration activities shall be managed by the Regional Entity per the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into the Rules of Procedure as Appendix 5A *Organization Registration and Organization Certification Manual*:

2.1 Regional entities shall verify that all Reliability Coordinators, Balancing Authorities, and Transmission Operators meet the registration requirements of Section 501(1.4).

3. **Certification** — The following Organization certification activities shall be managed by the Regional Entity in accordance with an approved delegation agreement or another applicable agreement:

- 3.1 An entity seeking certification to perform one of the functions requiring certification shall contact the Regional Entity for the region(s) in which it plans to operate to apply for certification.
- 3.2 An entity seeking certification and other affected entities shall provide all information and data requested by NERC or the Regional Entity to conduct the certification process.
- 3.3 Regional Entities shall notify NERC of all certification applicants.
- 3.4 NERC and/or the Regional Entity shall evaluate the competency of entities requiring certification to meet the NERC certification requirements.
- 3.5 NERC or the Regional Entity shall establish certification procedures to include evaluation processes, schedules and deadlines, expectations of the applicants and all entities participating in the evaluation and certification processes, and requirements for certification team members.
 - 3.5.1 The NERC / 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 (including requesting a demonstration of all tools identified in the certification process), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the certification process), reviewing certification documents and projected system operator work schedules, and reviewing any additional documentation needed to support the completed questionnaire or inquiries arising during the site visit.
 - 3.5.2 The NERC/ Regional Entity certification procedures will provide for preparation of a written report by the certification team, detailing any deficiencies that must be resolved prior to granting certification, along with any other recommendations for consideration by the applicant, the Regional Entity, or NERC.

504. Appeals

1. NERC shall maintain an appeals process to resolve any disputes related to registration or certification activities per the *Organization Registration and Organization Certification Manual*, which is incorporated in these rules as Appendix 5A.
2. The Regional Entity certification appeals process shall culminate with the regional board or a committee established by and reporting to the regional board as the final adjudicator, provided that 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 (Appendix 5A *Organization Registration and Organization Certification Manual*).

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 Organization Certification Programs.

506. Independent Audit of NERC Organization Registration and Organization Certification Program

1. NERC, through the Compliance and Certification Committee, shall provide for an independent audit of its Organization Registration and Organization Certification Programs 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, effectiveness and consistency of the NERC Organization Registration and Organization Certification Programs.
3. The final report shall be posted by NERC for public viewing.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response to the Board within 30 days of the final report, detailing the disposition of each and every recommendation, including an explanation of the reasons for rejecting a recommendation and an implementation plan for the recommendations accepted.

507. Provisions Relating to Joint Registration Organizations (JRO)

1. In addition to registering as the entity responsible for all functions that it performs itself, an entity may register as a JRO on behalf of one or more of its members or related entities for one or more functions for 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 for that function or those functions including all reporting requirements. Any entity seeking to register as a JRO must submit a written agreement with its members or related entities for all requirements/sub-requirements for the function(s) for which the entity is registering for and takes responsibility for, which would otherwise be the responsibility of one or more of its members or related entities. Neither NERC nor the Regional Entity shall be parties to any such agreement, 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 JRO registration.

2. The JRO registration data must include the same registration information as a normal compliance registration entry. The JRO is responsible for providing all of the information and data, including submitting reports, as needed by the Regional Entity for performing assessments of compliance.
3. The Regional Entity shall notify NERC of each JRO that the Regional Entity accepts. The notification will identify the point of contact and the function(s) being registered for on behalf of its members or related entities.
4. For purposes of compliance audits, the Regional Entity shall keep a list of all JROs. This document shall contain a list of each JRO's members or related entities and the function(s) for which the JRO is registered for that member(s) or related entity(s). It is the responsibility of the JRO to provide the Regional Entity with this information as well as the applicable JRO agreement(s).
5. The Regional Entity may request clarification of any list submitted to it that identifies the members of the JRO and may request such additional information as the Regional Entity deems appropriate.
6. The Regional Entity's acceptance of a JRO shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the JRO will meet the registration requirements of Section 501(1.4).
7. NERC shall maintain, and post on its Web site, a JRO registry listing all JRO registrations that have been reviewed and accepted by the Regional Entity. The posting shall identify the JRO entity taking compliance responsibilities for itself and its members.
8. The JRO shall inform the Regional Entity of any changes to an existing JRO. The Regional Entity shall promptly notify NERC of each such revision.
9. Nothing in 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/sub-requirement of a reliability standard shall inform the JRO of its registration.

508. Provisions Relating to Coordinated Functional Registration (CFR) Entities

1. In addition to registering as an entity responsible for all functions that it performs itself, multiple entities may each register using a CFR for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function. The CFR submission must include a written agreement that governs itself and clearly specifies the entities' respective compliance responsibilities. The registration of

the CFR is the complete registration for each entity. Additionally, each entity shall take full compliance responsibility for those standards and/or requirements/sub-requirements it has registered for in the CFR. Neither NERC nor the Regional Entity shall be parties to any such agreement, 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 CFR.

2. Each CFR or each individual entity within a CFR must identify a point of contact that is responsible for providing information and data, including submitting reports as needed by the Regional Entity related to the CFR registration.
3. The Regional Entity shall notify NERC of each CFR that the Regional Entity accepts.
4. NERC or the Regional Entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the CFR and may request such additional information as NERC or the Regional Entity deems appropriate.
5. The Regional Entity's acceptance of that CFR shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the CFR will meet the registration requirements of Section 501(1.4).
6. NERC shall maintain, and post on its Web site, a CFR registry listing all CFR registrations that have been accepted by NERC or by a Regional Entity. The posting shall clearly list all the reliability standards or requirements/sub-requirements thereof for which each entity of the CFR is responsible for under the CFR.
7. The point of contact shall inform the Regional Entity of any changes to an existing CFR. The Regional Entity shall promptly notify NERC of each such revision.
8. In the event of a violation of a reliability standard or of a requirement/sub requirement of a reliability standard for which an entity of a CFR is registered, that entity shall be identified in the notice of alleged violation and shall be assessed the sanction or penalty in accordance with the NERC Sanctions Guidelines. In the event a Regional Entity is not able to determine which entity(ies) is responsible for a particular reliability standard, or requirements/sub requirements thereof that has been violated, the Regional Entity shall investigate the noncompliance in accordance with the NERC Rules of Procedure Section 400, *Compliance Enforcement*, to determine the entity(ies) to which the Regional Entity shall to issue the sanction or penalty for the violation.
9. Nothing in Section 508 shall preclude an entity registered in a CFR, 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 entity is registering. An entity

registered in a CFR that registers as responsible for any reliability standard or requirement/sub requirement of a reliability standard shall inform the point of contact 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 AND FORMATION OF SECTOR FORUMS

701 Confidentiality Requirements for Readiness Evaluations and Evaluation Team Members

1. All information made available or created during the course of any reliability readiness 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 of the reliability readiness evaluation.
3. NERC will retain reliability readiness evaluation-related documentation, notes, and materials for a period of time as defined by NERC.
4. These confidentiality requirements shall survive the termination of the NERC Reliability Readiness Evaluation and Improvement Program.

702. 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 and compliance enforcement programs to make the necessary adjustments to preserve reliability based on a risk-based approach.

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. Each user, owner, and operator of the bulk power system shall provide NERC and the applicable regional entities with such information as is necessary to enable NERC and the applicable regional entities to carry out their responsibilities under this section. Failure to submit information in a timely manner or in the form requested may result in imposition of a fine to the bulk power system user, operator or owner in accordance with section 414.
- d. 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.
- e. 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.

- f. 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.
- g. 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 and regional entities 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 and regional entities shall also analyze potential vulnerabilities in the bulk power system brought to their 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 and regional entities 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.
3. Each user, owner, and operator, of the bulk power system shall provide NERC and the applicable regional entities with such information as is necessary to enable NERC and the applicable regional entities to carry out their responsibilities under this section. Failure to submit information in a timely manner or in the form requested may result in imposition of a fine to the bulk power system user, operator or owner in accordance with section 414.

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 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. Failure to submit information in a timely manner or in the form requested may result in imposition of a fine to the bulk power system user, operator or owner in accordance with section 414.
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, 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 Standards 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 scheduled and conducted for each calendar year so as to allow 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, including timely submission of the proposed budget to FERC for approval in accordance with FERC regulations.
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 description and explanation of NERC's proposed ERO program activities for the year; budget component justification based on statutory or other authorities; explanation of how each budgeted activity lends itself to the accomplishment of the statutory or other authorities; sufficiency of resources

provided for in the budget to carry out the ERO program responsibilities; explanation of the calculations and budget estimates; identification and explanation of changes in budget components from the previous year's budget; information on staffing and organization charts; and such other information as is required by FERC and other ERO governmental authorities having authority to approve the proposed budget.

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 proposed annual budget for carrying out its delegated authority functions as well as all other activities and funding to NERC in accordance with a schedule developed by NERC and the regional entities, which shall provide for the regional entity to submit its final budget that has been approved by its board of directors or other governing body no later than July 1 of the prior year, in order to provide sufficient time for NERC's review and comment on the proposed budget and approval of the regional entity budget by the NERC Board of Trustees in time for the NERC and regional budgets to be submitted to FERC and other ERO governmental authorities for approval in accordance with their regulations. The regional entity's budget shall include supporting materials in accordance with the budget and reporting format developed by NERC and the regional entities, 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, I 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 or 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), and (3) 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 entities³ 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

³ A regional entity may allocate funding obligations using an alternative method approved by NERC and by FERC and other appropriate ERO governmental authorities, as provided for in the regional delegation agreement.

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.
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 a compliance monitoring and enforcement process that leads to imposition of a penalty, the entity that initiated the process shall receive any penalty monies imposed and collected as a result of that process, unless a different disposition of the penalty monies is provided for in the delegation agreement, or in a contract or a disposition of the violation that is approved by NERC and FERC.
2. All funds from financial penalties assessed in the United States received by the entity initiating the compliance monitoring and enforcement process shall be applied as a general offset to the entity's budget requirements for the subsequent fiscal year, if received by July 1, or for the second subsequent fiscal year, if received on or after July 1. Funds from financial penalties shall not be directly applied to any program maintained by the entity conducting the compliance monitoring and enforcement process. Funds from financial penalties assessed against a Canadian entity shall be applied as specified by legislation or agreement.
3. In the event that a compliance monitoring and enforcement process is conducted 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 or alternatives to the foregoing provisions will be allowed if approved by NERC and by FERC any other applicable ERO governmental authority.

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 for an amended or supplemental budget for NERC or a regional entity and, if necessary under the amended or supplemental budget, to collect a special or additional assessment for statutory functions of NERC or the regional entity. 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 except with the approval of NERC and FERC and other appropriate ERO governmental authorities. Responsibilities and authorities may only be sub-delegated to another regional entity. Regional entities may share resources with one another so long as such arrangements do not result in cross-subsidization or in any sub-delegation of authorities.

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 five 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. Audits of regional entities shall be conducted, to the extent practical, 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, and if applicable to the coverage of the audit, may be based on Canadian or other international standards. The audits required by this section 1207 shall not duplicate the audits of regional entity compliance monitoring and enforcement programs provided for in **Appendix 4A**, Audit of Regional Compliance Programs, to these rules of procedure.

1208. Process for Considering Registered Entity Requests to Transfer to Another Regional Entity Audits

1. A registered entity that is registered in the region of one regional entity and believes its registration should be transferred to a different regional entity may submit a written request to both regional entities requesting that they process the proposed transfer in accordance with this section. The registered entity's written request shall set forth the reasons the registered entity believes justify the proposed transfer and shall describe any impacts of the proposed transfer on other bulk power system owners, operators, and users.
2. After receiving the registered entity's written request, the two regional entities shall consult with each other as to whether they agree or disagree that the requested transfer is appropriate. The regional entities may also consult with affected reliability coordinators, balancing authorities and transmission operators as appropriate. Each regional entity shall post the request on its web site for public comment period of 21 days. In evaluating the proposed transfer, the regional entities shall consider the location of the registered entity's bulk power system facilities in relation to the geographic and electrical boundaries of the respective regions; the impacts of the proposed transfer on other bulk power system owners, operators; and users, the impacts of the proposed transfer on the current and future staffing, resources, budgets and assessments to other load-serving entities of each regional entity, including the sufficiency of the proposed transferee regional entity's staffing and resources to perform compliance monitoring and enforcement activities with respect to the registered entity; the registered entity's compliance history with its current regional entity; and the manner in which pending compliance monitoring and enforcement matters concerning the registered entity would be transitioned from the current regional entity to the transferee regional entity; along with any other reasons for the proposed transfer stated by the registered entity and any other reasons either regional entity considers relevant. The regional entities may request that the registered entity provide additional data and information concerning the proposed transfer for the regional entities' use in their evaluation. The registered entity's

current regional entity shall notify the registered entity in writing as to whether (i) the two regional entities agree that the requested transfer is appropriate, (ii) the two regional entities agree that the requested transfer is not appropriate and should not be processed further, or (iii) the two regional entities disagree as to whether the proposed transfer is appropriate.

3. If the two regional entities agree that the requested transfer is appropriate, they shall submit a joint written request to NERC requesting that the proposed transfer be approved and that the delegation agreement between NERC and each of the regional entities be amended accordingly. The regional entities' joint written submission to NERC shall describe the reasons for the proposed transfer; the location of the registered entity's bulk power system facilities in relation to the geographic and electrical boundaries of the respective regions; the impacts of the proposed transfer on other bulk power system owners, operators, and users; the impacts of the proposed transfer on the current and future staffing, resources, budgets and assessments of each regional entity, including the sufficiency of the proposed transferee regional entity's staffing and resources to perform compliance monitoring and enforcement activities with respect to the registered entity; the registered entity's compliance history with its current registered entity; and the manner in which pending compliance monitoring and enforcement matters concerning the registered entity will be transitioned from the current regional entity to the transferee regional entity. The NERC Board of Trustees shall consider the proposed transfer based on the submissions of the regional entities and any other information the board considers relevant, and shall approve or disapprove the proposed transfer and the related delegation agreement amendments. The NERC board may request that the regional entities provide additional information, or obtain additional information from the registered entity, for the use of the NERC board in making its decision. If the NERC board approves the proposed transfer, NERC shall file the related delegation agreements with FERC for approval.
4. If the two regional entities do not agree with each other that the proposed transfer is appropriate, the regional entity supporting the proposed transfer shall, if requested by the registered entity, submit a written request to NERC to approve the transfer and the related delegation agreement amendments. The regional entity's written request shall include the information specified in section 1208.3. The regional entity that does not believe the proposed transfer is appropriate will be allowed to submit a written statement to NERC explaining why the regional entity believes the transfer is not appropriate and should not be approved. The NERC Board of Trustees shall consider the proposed transfer based on the submissions of the regional entities and any other information the board considers relevant, and shall approve or disapprove the proposed transfer and the related delegation agreement amendments. The NERC board may request that the regional entities provide additional information, or obtain additional information from the registered entity, for the use of the NERC board in making its decision.

If the NERC board approves the proposed transfer, NERC shall file the related delegation agreements with FERC for approval.

5. Prior to action by the NERC Board of Trustees on a proposed transfer of registration under Section 1208.3 or 1208.4, NERC shall post information concerning the proposed transfer, including the submissions from the regional entities, on its Web site for at least twenty-one (21) days for the purpose of receiving public comment.
6. If the NERC Board of Trustees disapproves a proposed transfer presented to it pursuant to either section 1208.3 or 1208.4, the regional entity or entities that believe the transfer is appropriate may, if requested to do so by the registered entity, file a petition with FERC pursuant to 18 C.F.R. section 39.8(f) and (g) requesting that FERC order amendments to the delegation agreements of the two regional entities to effectuate the proposed transfer.
7. No transfer of a registered entity from one regional entity to another regional entity shall be effective (i) unless approved by FERC, and (ii) any earlier than the first day of January of the second calendar year following approval by FERC, unless an earlier effective date is agreed to by both regional entities and NERC and approved by FERC.

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~~fifty members of NERC, which number shall include members from at least three membership ~~sectors~~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~~NERC.

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~~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. In addition, failure to submit information in a timely manner or in the form requested by NERC or a regional entity pursuant to this Section 1600 may result in imposition of a fine to the bulk power system owner, operator or user in accordance with section 414.

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.

**Sanction Guidelines
of the
North American
Electric Reliability Corporation**

Proposed Revised Version – 6-29-2011 for Posting

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1. Preamble and Overview

The North American Electric Reliability Corporation (“NERC”), as the electric reliability organization (“ERO”), and regional entities to whom NERC has delegated authority (hereinafter referred to collectively as “regional entities” or individually as a “regional entity”¹) shall determine and may levy monetary penalties and non-monetary sanctions and remedial action directives against owners, operators, and users of the bulk power system for violations of the requirements of NERC Reliability Standards (“reliability standards”) approved by the Federal Energy Regulatory Commission (“FERC”) and applicable authorities in Canada and/or Mexico. This document sets out the processes and principles to be followed, and factors that will be considered when determining penalties, sanctions, or remedial action directives for violations. Collectively these processes, principles and factors are NERC’s penalties, sanctions, and remedial action directive guidelines.

NERC and the regional entities will ~~exclusively~~ follow the directives, principles and processes in these Sanction Guidelines when determining penalties, sanctions, or remedial action directives for a violation. ~~However, The~~ adjustment factors in these Sanction Guidelines are also provided ~~to afford~~ NERC ~~or and~~ the regional ~~entities~~entity the flexibility needed to accommodate~~take into account~~ the facts surrounding each violation. ~~In this manner, rigid prescription of specific penalty formulae can be avoided at the same time that appropriate limitations on the degree of discretion and flexibility available to address each violation on its merits is maintained.~~ The outcome will be remedies~~penalties and sanctions~~ that are commensurate ~~and fair compared~~ to the reliability impact of the violation and to remedies~~those~~ levied for similar violations, yet appropriately reflective of any unique facts and circumstances regarding the specific violation and violator.

~~The adjustment factors established in this document are generally consistent with those listed in the FERC Policy Statement on Enforcement issued on October 20, 2005. However, discussion of the factors presented in this document is not exhaustive as other facets of these factors, or other additional factors not discussed herein, may also be considered to determine a given penalty, sanction, or remedial action, as NERC or the regional entity deems appropriate under the circumstances.~~

Regional entities shall follow these Sanction gGuidelines ~~when to~~ determine~~ing~~ penalties, sanctions, or remedial action directives. NERC shall oversee the regional entities’ application of the Sanction gGuidelines to ensure that regional entities achieve acceptable levels of consistency ~~are achieved~~. NERC’s oversight will ~~also ensure comparable outcomes; i.e.~~ that there is acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to reliability of the bulk power system. ~~In order to facilitate this oversight, regional entities’ reporting to NERC of penalties and sanctions they have determined will be thorough and in sufficient detail that NERC can understand and reasonably replicate the outcomes reached;~~ NERC may develop reporting requirements or a standard reporting form for use by the regional entities for this purpose, as NERC deems necessary or appropriate.

As experience is gained by NERC and the regional entities through the use and application of these Sanction gGuidelines, NERC will review the Sanction gGuidelines and may modify them as NERC deems appropriate or necessary. Authority delegated by NERC to the regional entities with respect to penalties, sanctions, or remedial action directives does not include the authority to modify these Sanction gGuidelines.

NERC and the regional entities will apply the provisions of this document in accordance with applicable statutory provisions and with the regulations, orders, and statements of policy of FERC and other ERO governmental authorities that are applicable to the determination and imposition of penalties and sanctions for violations of reliability standards in the respective jurisdictions.

¹ For purposes of this footnote, the term “regional entity” shall be read as either as single or plural, as necessary, to refer to the applicable regional entity or regional entities.

| Any revision to this document ~~or to the principles and factors identified or addressed within it~~ must first be approved by the NERC board, then by FERC, appropriate authorities in Canada or appropriate authorities in Mexico prior to becoming effective and applicable within the United States or these authorities' respective jurisdictions.

2. Document Scope and Exclusions

This document identifies and discusses the processes and principles to be followed, and factors that will be considered to determine penalties, sanctions, or remedial actions for violations of the reliability standards.

This document notes but does not otherwise address the progression of actions and steps that NERC or the regional entity will follow to process a violation from its initial incoming status upon discovery as a possible violation, through to its possible final determination as a confirmed violation. This is set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure.

This document notes but does not otherwise address how a possible violation or alleged violation is reviewed in order to confirm or dismiss it. NERC's process and requirements for this review are set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure. Regional entities will undertake such reviews using the processes and requirements set out in the NERC Compliance Monitoring and Enforcement Program.

This document notes but does not otherwise address the processes and procedural steps by which a confirmed violation can be appealed, or by which a penalty, sanction, or remedial action determined and levied for a violation can be appealed. These procedures are set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, and applicable regional entity program documents.

The NERC Compliance Monitoring and Enforcement Program provides for the possibility of settlements within NERC or regional entity compliance enforcement programs. This document makes reference to settlements to but does not address them further.

3.2. Basic Principles

The following paragraphs identify and discuss the basic principles underpinning why and how NERC and the regional entities will determine penalties, sanctions, and remedial action directives for violations of the requirements of ~~the~~ reliability standards.

The ~~principles are unique and complimentary; the~~ order in which ~~they~~the principles are presented in this document does not set or indicate order of precedence.

~~3.1 Necessary Element of NERC Compliance Program~~

~~Primary objectives of NERC as the ERO include the promotion and enforcement of compliance with the reliability standards by owners, operators, and users of the bulk power system; standards made mandatory by duly authorized legislative bodies in the U.S and Canada, and designed to maintain and promote the reliability of the two countries' shared power grids. Consistent with these objectives, NERC and the regional entities will monitor and act to verify compliance with standards' requirements; however, beyond monitoring and acting only to verify compliance, NERC and the regional entities will also hold bulk power system owners, operators, and users—or their delegates—accountable for confirmed compliance violations. This accountability will include determination and the possible levying of penalties, sanctions, or remedial actions.~~

~~Penalties, sanctions, and remedial actions are valid and necessary mechanisms to NERC and the regional entities for the enforcement and promotion of compliance to the reliability standards, in part because they can:~~

- ~~a. promote compliance behavior;~~
- ~~b. provide deterrence to future incidents, actions or situations of noncompliance by the violator or others;~~
- ~~c. implement actions that will promptly correct behavior;~~
- ~~d. disgorge benefits that may or may have accrued to a violator as a consequence of violating;~~
- ~~e. visit upon a violator some portion of any damage their violation may or may have visited upon others.~~

~~Accordingly, the determination and potential levying of appropriate penalties, sanctions, or remedial actions by NERC or the regional entity upon those responsible for violations shall be a required step within the NERC and regional entity compliance enforcement programs.~~

~~3.2 Settlement of Compliance Violations~~

~~NERC and the regional entities shall maintain the reliability of the bulk power system by enforcing compliance with NERC and regional entity reliability standards. NERC and regional entity compliance enforcements programs will lay out how NERC and the regional entities will do this. In particular and by necessity, elements of these programs regarding the confirmation of violations, the determination and levying of penalties, sanctions, or remedial actions, and appeals are rigid and legalistic in form and nature in order to respect the basic tenets of due process and natural justice inherent within United States and Canadian justice systems, respectively, upon which they are being based. However, absolute adherence to the compliance programs, to the exclusion of other options, may not be the most appropriate, efficient or desirable means by which to achieve the end goal in all circumstances, to all entities party to a violation.~~

2.1 Settlement of Compliance Violations

Pursuant to~~As set out in~~ the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, possible or alleged violations of the reliability standards may be resolved ~~dealt with~~ through settlements reached between NERC, a regional entity and the registered entity or entities to whom a possible, or alleged, ~~or confirmed~~ violation is attributed to by NERC or

the regional entity. Any provisions ~~made~~ within a settlement regarding penalties, ~~or~~ sanctions, ~~or remedial actions~~ can supersede any corresponding penalties ~~or~~ sanctions that would otherwise be determined pursuant to these guidelines. Any registered entity that has received a notice of possible violation or a notification of an alleged violation may request settlement negotiations at any time prior to the possible or alleged violation becoming a confirmed violation in accordance with Appendix 4C. However, until a settlement agreement is executed, NERC or the regional entity may continue activities and actions towards the determination and levying of a penalty, sanction, or remedial action directive that would otherwise be applicable pursuant to these guidelines, or that will be applicable if settlement is not reached.

3.1 Settlement Request

~~Any entity found in or being investigated for a violation may request settlement negotiations at any time, including prior to issuance of a notice of alleged violation; however, NERC or the regional entity may decline to enter into or continue settlement negotiations after the possible violation or alleged violation becomes a confirmed violation.~~

3.2 Settlement Effect on Continuation of Determination of Penalties, Sanctions, or Remedial Actions

~~Until a settlement is finalized or parties to that settlement agree otherwise, NERC or the regional entity may continue activities and actions towards the determination and levying of a penalty, sanction, or remedial action that would otherwise be applicable pursuant to these guidelines, or that will be applicable if the settlement is not finalized.~~

3.5 Timing of Determination of Penalty, Sanction or Remedial Action

~~All possible violations and alleged violations will be reviewed by NERC or the regional entity with the outcome that either the violation will be confirmed or the violation will be dismissed.~~

2.2 Timing of Determination of Penalty, Sanction or Remedial Action Directive

The penalty, ~~or~~ sanction, ~~or other remedial action~~ for a violation will be determined during the enforcement process in accordance with Section 5.0 of Appendix 4C ~~when the violation becomes a confirmed violation or is resolved as part of a settlement agreement.~~

At any time during the enforcement process, including any confirmation review, hearings, or appeals, NERC or the regional entity may determine that a remedial action directive to the registered entity is warranted and, in accordance with Section 7.0 of Appendix 4C, by the subject entity of the review, hearing, or appeals. NERC or the regional entity may direct that the registered entity implement the such remedial actions directive ~~be undertaken by the subject entity at any time, including prior to confirmation of a violation, and without regulatory approval.~~

3.6 Determining Party

~~The determination of penalty, sanction or other remedial action for a violation will generally be undertaken by the same entity determining the violation to be a confirmed violation, but subject to review by NERC if the determination is made by a regional entity.~~

3.7 No Influence of Penalty, Sanction or Remedial Action upon Violation Confirmation Process

~~The penalty, sanction, or remedial action determined for a violation will not influence the outcome of the regional entity' or NERC's confirmation review of the violation. In particular, if the determination of penalty, sanction, or remedial action for a probable violation is being undertaken by the same entity undertaking the confirmation review, the entity will insure that there is sufficient separation, in such terms as time, process, personnel or the like, to preclude that the penalty, sanction, or remedial action determined influences the outcome of the confirmation review.~~

3.8.2.3 Reasonable Relationship to Violation

Penalties ~~and~~, sanctions, ~~and remedial actions~~ levied ~~or applied~~ for the violation of a reliability standard shall bear a reasonable relation to the seriousness of the violation while also reflecting consideration of the ~~other~~ factors ~~specified in that~~ these ~~Sanction g~~Guidelines ~~direct to take into account~~. ~~In the United States, the legislation establishing mandatory enforceable reliability standards and the ERO requires that “Any penalty imposed ... shall; (A) bear a reasonable relation to the seriousness of the violation; and (B) take into consideration the efforts of the user, owner, or operator to remedy the violation in a timely manner”².~~

3.9.2.4 Use ~~and Facets~~ of Factors to Determine Penalties

Penalties levied for a ~~given~~reliability standard violation will be based on all facts and ~~other~~ information relevant to the ~~violation incident or situation~~. To that end, these ~~Sanction g~~Guidelines include factors ~~which that~~ NERC and the regional entities will consider while determining the penalty or sanction ~~for a violation to be levied~~.

~~NERC considers, and these guidelines direct, that t~~The presence of some factors ~~in connection with within~~ a violation aggravates the seriousness of that violation and should ~~cause an increase or expansion of the penalty to be levied~~. Conversely, the presence of ~~certain~~some other factors mitigates ~~the that~~ seriousness ~~of the violation~~ and should ~~cause a decrease or reduction of reduce~~ the penalty ~~to be levied~~. ~~Also, some factors may mitigate or aggravate, and should have commensurate impact.~~ ~~NERC considers, and these guidelines direct, that t~~The absence of an aggravating or mitigating factor will have no impact, ~~as opposed to a mitigating or aggravating impact, respectively, to on the a~~ penalty.

This document ~~identifies many aggravating and mitigating presents many of the relevant facets of the~~ factors ~~that, if present in connection with a violation, should be considered in determining the penalty or sanction, and describes how these factors should be taken into account included in these guidelines.~~ However, additional facets of these factors, ~~or a~~Additional factors not ~~identified in this document discussed herein~~, may also be considered ~~into~~ determin~~ing~~e a ~~given~~ penalty, ~~or~~ sanction, ~~or remedial action~~, as NERC or the regional entity deems appropriate under the circumstances. Where additional factors ~~or facets~~ are ~~considered used~~ they will be identified, and their use will be justified. ~~In the notice of penalty, and the.~~The effect of using these factors ~~or facets~~ on the penalty, ~~or~~ sanction, ~~or remedial action~~ determined will ~~also~~ be fully and clearly disclosed.

3.10.2.5 Multiple Violations

A violation is a failure ~~or inadequacy~~ to meet a requirement of a reliability standard by a ~~bulk power system owner, operator or user~~ party responsible to comply with that requirement.

The ~~failure or inadequacy of a violator to entity’s noncompliance comply~~ may involve more than one standard or several requirements of a single standard, ~~as~~ As such, multiple individual violations may ~~exist be in play~~ when NERC or the regional entity determines penalties ~~or~~, sanctions, ~~or remedial actions~~ for an ~~incident or situation of~~ noncompliance ~~are being determined~~.

~~Strictly speaking,~~ NERC or the regional entity ~~may can~~ determine and levy a separate penalty or sanction, ~~or direct remedial action~~, upon a violator for each individual violation ~~of a reliability standard requirement~~. However, ~~where in instances of~~ multiple violations related to a single act or common incidence of noncompliance, ~~or where the penalties or sanctions for several unrelated violations by the entity are being determined at the same time~~, NERC or the regional entity ~~or entities~~ ~~may will~~ generally determine and issue a single aggregate penalty, ~~or~~ sanction, ~~or remedial action directive~~ bearing reasonable relationship to the aggregate of the ~~related~~ violations. ~~In such a case,~~ ~~The~~ penalty, ~~or~~ sanction, ~~or remedial action~~ will not be that determined individually for the least

² H.R. 6, Energy Policy Act of 2005, Section 215, Paragraph e, subparagraph 6.

~~serious of the violations; it~~ will generally be at least as large or expansive as what would be called for individually for the most serious of the violations.

Some entities may ~~be registered as being responsible~~ for more than one reliability function in the NERC Compliance Registry (e.g., transmission owner, transmission operator, balancing authority, generation operator), and as a result, a single requirement in some certain reliability standards may apply to the responsible entity for several of its registered functions. Where an entity performs several registered functions are performed by the same entity, NERC or the regional entity will assess a violation and associated penalty or sanction will be assessed against the entity, not against each function.

3.14.2.6 Relation of the Penalty to the Seriousness of the Violation and Violator's Ability to Pay

As ~~stated discussed~~ in Section ~~3.8, 2.3~~ above, penalties levied for the violation of a reliability standard shall bear a reasonable relation to the seriousness of the violation. As part of the assessment of the seriousness of the violation, NERC or the regional entity shall~~The seriousness of a given violation by a given violator shall be assessed by~~ review ~~of the applicability of~~ the Violation Risk Factors³ associated with the violation ~~and to~~ the characteristics of the violator's operation or power system. NERC or the regional entity may consider the size of the violator.~~Size is a characteristic of a violator's operation or system. The size of the violator can be considered in the assessment but shall not be the only characteristic considered. Where size is considered in such a review the facts relating to the violation in question will be reviewed. NERC or the regional entity will also consider the facts of the violation so such~~ that the "actual" size of the violator is ~~properly discerned and~~ appropriately considered. ~~The following are provided as illustrative examples:~~

- If the violator belongs to a generation and transmission cooperative or joint-action agency, size will be attributed to the particular violator, rather than to that generation and transmission cooperative or joint-action agency.
- If the violator constitutes part of a corporate family the size of the violator will be attributed to that violator alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the violator.
- If the violator is an entity established solely as a shell to register as subject to one or more Reliability Standards the size of the entity will be disregarded in favor of consideration of the size of the parent entity or any affiliates that NERC or the regional entity deems involved and constituting the "actual" size of the violator.

At the request of the violator, NERC or the applicable regional entity or entities may review the penalty in light of the violator's financial ability to pay the penalty. Financial ability shall include ~~both~~ the financial strength of the entity as well as its financial structure (e.g., for-profit versus non-profit). Where penalties are reduced or eliminated, NERC or the regional entity ~~shall~~may consider non-monetary sanctions ~~or remedial action~~ as alternatives or substitutes to ~~the monetary~~ penalty, pursuant to Sections ~~32.1247, 32.1348 and 32.1449~~, below, of these Sanction Guidelines~~this document.~~

~~The above actions will: (i) promote that violators are penalized or sanctioned commensurate with the risk or effect that their specific violation of the reliability standards had or is having to the reliability of the bulk power system while also; (ii) mitigating overly burdensome penalties to less consequential or financially limited entities concurrent with; (iii) promoting that no penalty is inconsequential to the violator to whom it is assessed. This will promote that penalties levied for violations of reliability standards bear a reasonable relation to the seriousness of the violation while also addressing violators' ability to pay the penalties they are assessed.~~

³ See Section ~~4 Part 43.1.1~~ for a discussion of these factors.

3.12.2.7 Violation Time Horizon

Reliability standards involving longer and broader time horizons, such as long-term planning activities, may have a lesser immediate impact and pose less immediate risk to the reliability of the bulk power system than standards ~~addressing~~involving shorter and narrower timeframes, such as entities' conduct in real time. Similarly, standards involving longer and broader time horizons typically will provide a longer time period over which to discover and remedy a violation when compared to standards ~~involving~~addressing more immediate activities such as next-day planning, same-day operations or real-time operations. Using a time horizon element in the determination of penalties for violations provides for recognition of the “more immediate” nature — and hence higher risk — of the threat of some violations as opposed to the lesser-risk “future threat if not corrected” nature of other violations.

~~NERC or the regional entity Penalties levied for the violation of a reliability standard~~ shall consider the time horizon of the standard violated. ~~Violations of standards involving more immediate or real-time activities will generally incur larger penalties than violations of standards with longer or broader~~ time horizons.

Time horizons inherent in reliability standard requirements are not reflected in their ~~assigned~~ Violation Risk Factors or Violation Severity Levels for the requirement.⁴ Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount⁵ for the violation.

~~NERC or the regional entity will utilize judgment and will analyze the facts of the violation to determine~~ the time horizon for the violation considered and its impact on the selection of the Base Penalty Amount ~~for the violation will be decided upon by NERC or the regional entity based upon judgment and the facts of the violation. The rationale for the time horizon used and its impact on the setting of the Base Penalty Amount will be documented by NERC or the regional entity and provided within the Notice of Penalty issued for the violation.~~

3.13.2.8 Extenuating Circumstances

In unique extenuating circumstances, such as significant natural disasters, NERC or the regional entity may significantly reduce or eliminate penalties ~~may be significantly reduced or eliminated~~.

3.14.2.9 Concealment or Intentional Violation

~~NERC or the regional entity Penalties levied for the violation of a reliability standard~~ shall always consider as an aggravating factor ~~take into consideration~~ any attempt by a violator to conceal the violation from NERC or the regional entity, or any intentional violation incurred for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the bulk power system.

3.15.2.10 Economic Choice to Violate

~~Owners, operators, and users of the bulk power system may be presented with situations or circumstances where compliance with the reliability standards preclude or reduce an economic gain that could be realized by violating the standards.~~ Penalties shall be sufficient to assure that entities responsible for complying with reliability standards do not have incentives ~~find it attractive~~ to make economic choices that cause or unduly risk violations ~~of~~ of reliability standards, or ~~risk or cause~~ incidents resulting from violations of the reliability standards. Economic choice includes economic gain for, or the avoidance of costs to, the violator. NERC or the regional entity shall treat economic choice to violate as an aggravating factor when determining a penalty. ~~Penalties levied to violators who have made such a choice shall reflect this aspect of the violation.~~

⁴ See Section ~~4 Part 43.1~~ for a discussion of these factors.

⁵ See Section ~~4 Part 43.2~~

3.162.11 No Influence by Outcome of Economic Choice to Violate

Economic choices to violate are generally made for the violator's own potential gain, but making such a choice does not always result in all potential gains being realized or may result in damage or loss. However, ~~irrespective of~~ Whatever the financial outcome to the entity making an economic choice to violate a reliability standard, such decisions present a risk ~~to others'~~ reliability and to others, commonly without ~~either~~ their knowledge or consent. Penalties levied to violators making an economic choice to violate shall reflect only that the violator made an economic choice to violate a reliability standard. ~~was made at all;~~ ~~†~~ The lack of or reduced magnitude of any actual benefit received, or any damage suffered, by the violator as a consequence of making this choice will have no influence upon the determination of the penalty ~~to be levied~~.

3.172.12 Non-Monetary Sanctions ~~or Remedial Actions~~

Enforcement actions taken by NERC or a regional entity are not limited to monetary penalties; NERC or the regional entity may apply, at ~~theirs~~ its discretion ~~of NERC or the regional entity~~, non-monetary ~~sanctions or remedial actions may also be applied and can~~ including limitations on activities, functions, operations, or placement of the violator's name on other appropriate sanctions, ~~including the establishment of~~ a reliability watch list ~~composed~~ of major violators.

3.182.13 Non-Exclusiveness of Monetary Penalties or Non-Monetary Sanctions

NERC or the regional entity may impose a non-monetary sanction ~~may be imposed either~~ in lieu of or in addition to a monetary penalty ~~imposed~~ for the same ~~confirmed~~ violation, and vice versa. Imposition of a monetary penalty or non-monetary sanction for a violation does not preclude the imposition of the other as long as ~~in combination~~, the aggregate penalty ~~continues to~~ bears a reasonable relation to the seriousness of the violation and other relevant factors.

3.192.14 Monetization of the Value of Sanctions

A significant element of NERC's oversight of penalties, sanctions, and remedial action directives determined and levied or required by regional entities is to ensure ~~ing~~ acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to the reliability of the bulk power system by similarly situated entities. It is also a requirement and a commitment of NERC and the regional entities its designees that penalties, or sanctions, ~~or remedial actions~~ levied ~~or applied~~ for the violation of a reliability standard bear reasonable relation to the seriousness of the violation. ~~Specifically with respect to penalties and sanctions, it is intuitive that it~~ is ~~will be~~ easier, more objective, and more transparent to monitor and test for the acceptable similarity of penalties and sanctions if ~~(monetary)~~ penalties or monetized values of sanctions determined for violations are used as the primary basis of comparison, ~~versus comparisons made on the basis of other (non-monetized) considerations~~. Similarly, there will be ~~strong intuitiveness and~~ transparency, particularly to those ~~interested but not strongly~~ familiar with the power industry, that NERC or the regional entity reasonably addressed the seriousness of a violation ~~has been reasonably addressed~~ if the consequences ~~for it to the violator~~ are ~~determined and can be~~ expressed clearly and quantifiably in monetary terms.

Penalties determined and levied by NERC or regional entities will by definition be valued in monetary terms: U.S or Canadian dollars. It ~~will be~~ is the preference of NERC that ~~(non-monetary)~~ sanctions imposed either in lieu of or in addition to a penalty should include disclosure of the monetary value of that the sanctions ~~represent to the violator~~. ~~It is intuitive that defensible monetary values for those sanctions will be most easily determined if~~ Generally, NERC or the regional entity will first determine the penalty for the violation ~~pursuant to these guidelines is first determined and may, at their discretion, introduce~~ then the sanctions ~~to be levied are introduced and justified as~~ appropriate alternatives to ~~the~~ at penalty or as additions to a lesser penalty. However, NERC or the regional entity may determine the monetary value of sanctions ~~may be determined directly (e.g. without first determining a penalty amount) and monetized~~ using other methods.

NERC does not have a preference between penalties and sanctions for violations. The preference expressed here will support ensuring comparability of outcomes regarding application of these guidelines and the promotion of reasonable relationship between the seriousness of a violation and the sanctions, or penalties and sanctions, levied for it.

3.20 Maximum Limitations on Penalties

Penalties are direct, monetary judgments levied against a violator by NERC or the regional entity for the violation of requirements of the reliability standards. In contrast, sanctions will impose limitations or restrictions of some kind that may result in economic or other impacts to the violator, and remedial actions are directives by NERC or a regional entity to the violator regarding the correction of conditions, practices or any other relevant action or activity underlying the noncompliance(s) involved.

2.15 Maximum Limitations on Penalties

In the United States, the Federal Power Act allows for the imposition of civil penalties of up to \$1,000,000 per day per violation. NERC and the regional entities draw their authority to levy penalties from the Federal Power Act; accordingly this figure is and can be understood as the maximum monetary penalty that NERC or regional entities are authorized to levy. However, as this legislation also requires that “[a]ny penalty imposed ... shall; (A) bear a reasonable relation to the seriousness of the violation; and (B) take into consideration the efforts of the user, owner, or operator to remedy the violation in a timely manner⁶” *entities required to comply with the reliability standards must also understand that* In the United States, the maximum penalty amount that NERC or a regional entity will assess for a violation of a reliability standard requirement is \$1,000,000 per day per violation. NERC and the regional entities will be obligated to assess penalties amounts up to and including this maximum amount for violations where warranted pursuant to these Sanction gGuidelines.

In Canadian jurisdictions the maximum monetary penalty ~~potentially assessable~~ for a reliability standard violation is significantly less than \$1,000,000 per day per violation. ~~the amount allowed in the United States under the Federal Power Act.~~ Also Further, legislation presently governing ~~certain~~ some Canadian jurisdictions does not accommodate the levying of such a penalty under ~~certain~~ some circumstances, may not accommodate the levying of such a penalty for all violations, or does not accommodate the levying of any monetary penalties.

When NERC or a regional entity levies a penalty ~~may be levied~~, or propose ~~sd to a penalty to~~ regulatory authorities with jurisdiction to ~~be levied a penalty~~, NERC or the regional entity shall the following these steps ~~will be followed~~:

- a. NERC or the regional entity will initially disregard the penalty limitations of the applicable regulatory authorities ~~with jurisdiction~~, and will determine what the penalties or sanctions would be pursuant to these ~~s~~ Sanction gGuidelines ~~only~~.
- b. NERC or the regional entity will review the maximum penalty allowed in the applicable ~~by the regulatory authorities with~~ jurisdiction.
- c. NERC or the regional entity will set the actual penalty ~~to be levied, or proposed to the regulatory authorities with jurisdiction to be levied~~, as the lesser of (i) the penalty ~~that~~ determined pursuant to these Sanction gGuidelines and (ii) the maximum penalty or sanction allowed in ~~by~~ the applicable jurisdiction ~~regulatory authorities~~.
- d. If ~~the lesser penalty is~~ the maximum penalty allowed in the applicable jurisdiction is lower than the penalty determined under the Sanction Guidelines, in addition to the legally permissible penalty by the regulatory authorities, the notice of penalty or similar document issued by NERC or the regional entity regarding the violation will also list the penalty that was determined pursuant to these Sanction gGuidelines.

⁶ H.R. 6, Energy Policy Act of 2005, Section 215, Paragraph e, subparagraph 6.

Adhering to the above steps will insure that ~~the result of~~ the determination of any penalty for any violation will produce output that can be directly compared (i.e. without influence of ~~local authorities' any~~ penalty limitations or restrictions applicable in certain jurisdictions) with the penalty determined for any other violation, thus assisting the efforts of NERC and others to ensure that these Sanction Guidelines are uniformly applied and that there is an acceptable level of consistency in their application ~~of these sanction guidelines~~ across North America. Regulatory authorities with jurisdiction may also find such information useful for their determination of the appropriateness of any penalty or sanction proposed to them to be levied against a violator of the reliability standards. ~~Similarly, policy and legislative bodies may find such information of value to the review or development of arrangements addressing such matters.~~

3.212.16 Frequency and Duration of Violations

~~Section 316A of the Federal Power Act [16 U.S.C. § 825o-1(b)], as amended by the Energy Policy Act of 2005, provides that “any person who violates any provision of Part II of this title or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than \$1,000,000 for each day that such violation continues.”~~

~~FERC Order No. 672 interprets this statement as setting a cap on the monetary penalties that the Commission, NERC and regional entities can impose under FPA section 215. FERC has referred to this statutory provision as imposing a maximum \$1,000,000 “per day, per violation” penalty and has directed that the ERO must ensure that in the U.S. such a penalty amount (\$1,000,000), in such a manner (“per day, per violation”), can be imposed for a violation of the Reliability Standards should the conduct at issue so warrant.~~

As stated in Section 2.15 above, the maximum penalty that will be imposed in the U.S. for violation of a reliability standard is \$1,000,000 per day. However, some Reliability Standards may not support the assessment of penalties on a “per day, per violation” basis, but instead should have penalties calculated based on an alternative penalty frequency or duration. Where NERC or the regional entity deems that a monetary penalty is warranted, or where NERC or the regional entity is monetizing (Section 2.143.19) the value of a non-monetary sanction, for the violation of such a standard NERC or the regional entity they shall determine the penalty or monetized amount consistent with the following:

Multiple Instances of Violation on One Day

The nature of some Reliability Standards includes the possibility that an entity could violate the same requirement two or more times on the same day. In this instance, NERC ~~and/or~~ the regional entity are not limited to penalizing the violator a maximum of \$1,000,000 per day. ~~As NERC or the regional entity deems appropriate~~ NERC or the regional entity may deem that ~~there have been~~ multiple violations ~~that~~ occurred on the same day, each of which is subject to the maximum potential penalty of \$1,000,000 per violation, per day. Also, NERC or the regional entity is not constrained to assessing the same penalty amount for each of the multiple violations, irrespective of their proximity in time.

Cumulative Over Time

Certain requirements of ~~the Reliability Standards~~ are measured not on the basis of discrete acts, but ~~of~~ on cumulative acts over time. Reliability Standards that fall into this category ~~are~~ generally ~~those~~ involving measurements based on averages over a given period. ~~Where a violation of such a standard has occurred the element of averaging performance over a period of time introduces the difficulty to NERC or the regional entity of reasonably identifying (i) what date the violation should be deemed to have occurred and (ii) its duration.~~

If a Reliability ~~S~~standard requirement measured by an average over time can only be violated once per applicable period, ~~then~~ there is risk that a disproportionately mild penalty might be levied in a situation where the violation was serious and the effects on the Bulk-Power System were severe. In the future, as individual reliability standards are revised, each ~~R~~reliability ~~S~~standard requirement that is based on an average over time will specify the minimum period in which a violation could occur and how to determine when a violation arises, which may be other than once per applicable period⁷. In the interim until relevant ~~R~~reliability ~~S~~standards are so modified, where assessing a penalty for violation of any ambiguity on this point will be construed conservatively, meaning that where an entity has not complied with such a standard, NERC or the regional entity will generally consider that only one violation occurred per measurement period. However, notwithstanding this general principle of one violation per measurement period, if an average must be measured by a span of time greater than a month, each month of that span shall constitute at a minimum one violation.

Periodically Monitored Discrete Violation

Some ~~R~~reliability ~~S~~standards may involve discrete events which are only monitored periodically or which are reported by exception. If a requirement of such a standard states that a discrete event constitutes a violation, then (i) a violation arises when that event occurs and (ii) that violation continues until remedied; and furthermore, (iii) the violation ~~is deemed to have~~ occurred at the point that the entity ~~entered into noncompliance with the~~ reliability standard, regardless of the monitoring period for the activity or its date of discovery or reporting. For example, if a task required by a ~~R~~reliability ~~S~~standard requirement washas not ~~been~~ done by the required date, it is irrelevant that monitoring for compliance for the requirement occurs only on a yearly or other periodic basis; NERC or the regional entity will deem a violation to have occurred on the first day of noncompliance and each day thereafter until compliance is effectuated. Similarly, if a discrete event occurs and is not remedied on the date of its occurrence, then NERC or the regional entity will deem a violation to have occurred on the day of the first instance of the noncompliance and each day, ~~or portion thereof~~ thereafter until the entity is in compliance ~~is effectuated~~.

~~Non-compliance with a standard of this type will subject the violator to the potential maximum monetary penalty of \$1,000,000 per violation per day in violation.~~

NERC or the regional entity may, at its discretion, ~~is not constrained to~~ assessing the same penalty amount for each day that the entity was in violation of the ~~R~~reliability ~~S~~Standard requirement in question.

⁷ ~~Para. 41; FERC Order on Clarification and Rehearing [Docket No. RR06-1-006]~~

4.3. Determination of Monetary Penalties

~~The following~~This section describes the specific steps that NERC or the regional entity will follow to determine the monetary penalty for a violation⁸. The determination of non-monetary sanctions is discussed in Section 54 of this document; [Section 65 discusses remedial action directives].

- Step 1. ~~NERC or the regional entity will set~~ the Base Penalty Amount for the violation ~~will be set~~ as discussed in Sections 43.1 and 43.2, below.
- Step 2. ~~NERC or the regional entity will adjust the~~ The Base Penalty Amount set in Step 1 ~~will be reviewed~~ pursuant to Section 43.3, below. This will result in the Adjusted Penalty Amount.
- Step 3. ~~NERC or the regional entity may review~~ the Adjusted Penalty Amount determined in Step 2 ~~may be reviewed~~ in light of the violator's financial ability to pay the penalty. Also, where applicable, NERC or the regional entity will ~~reconfirm~~ that the penalty ~~set~~ will disgorge unjust profits or economic benefits associated with an economic choice to violate.⁹ At the conclusion of this review, ~~NERC or the regional entity will set~~ the Final Penalty Amount ~~will be set~~.
- Step 4. NERC or the regional entity will take into account any limitations on the maximum permissible penalty in the applicable jurisdiction.

~~Unless NERC or the regional entity deems alternative frequency or duration is warranted penalties shall be assessed on a per violation per day basis. At the discretion of NERC or the regional entity, a penalty may be assessed on a per violation per day basis or with alternative frequency or duration.~~ Where NERC or the regional entity deems that alternative penalty frequency or duration is warranted, the Notice of Penalty associated with the violation will clearly identify this and provide the rationale for it. Where NERC or the regional entity deems that alternative penalty frequency or duration is warranted, penalties shall be determined in accordance with section 3-212.16 of these Sanction Guidelines.

4.13.1 Initial Value Range of the Base Penalty Amount

NERC or the regional entity will determine an initial value range for the Base Penalty Amount by considering ~~two factors regarding the violation:~~ the Violation Risk Factor ("VRF") of the requirement violated and the Violation Severity Level ("VSL") assessed for the violation. Using the Base Penalty Amount Table provided in Appendix A NERC or the regional entity will look up the initial value range for the Base Penalty Amount by finding the intersection of the violation's VRF and VSL on the table.¹⁰

4.1.13.1.1 Violation Risk Factor

Each ~~requirement set out within NERC's~~ reliability standards ~~requirement~~ has been assigned a ~~Violation Risk Factor (VRF)~~ through the NERC reliability standards development process. The ~~VRF factors~~ have been defined and approved through the standards development process and are assigned to requirements to provide clear, concise and comparative association between the violation of a requirement and the expected or potential impact of the violation to the reliability of the bulk power system. One of three defined levels of risk is assigned to each standards requirement: Lower ~~VRF Risk Factor, or;~~ Medium ~~VRF Risk Factor,;~~ or; High ~~VRF Risk Factor. Definitions of the factors can be found in appropriate standards development process documentation.~~

⁸ The text in this section discusses the determination of a single penalty for an individual violation; however, the process laid out is also applicable to determining the individual penalties, or a single aggregate penalty, for multiple violations that are associated with each other as discussed in Section 3-Part 32.81 of this document.

⁹ ~~Reference: Section 3 Parts 3.15 and 3.16.~~

¹⁰ As discussed in Section 3-Part 32.51 of this document, where there is more than one violation in play, but the violations are sufficiently associated, NERC or the regional entity may set a single initial value range that is appropriate in light of the individual VRF/VSL combinations of the violations.

4.1.23.1.2 Violation Severity Level

~~Violation severity levels (VSLs) are defined measurements~~ levels of the degree to which ~~a violator violated~~ a requirement of a reliability standard ~~was violated~~. Whereas ~~VRFs~~ violation risk factors are determined pre-violation and indicate the relative potential impacts that violations of each standard could pose to the reliability of the bulk power system, ~~VSLs are the violation severity level is~~ assessed post-violation and ~~are~~ is an indicator of ~~the severity of the how severely the violator~~ actual~~ly violated~~ violation of the standard(s) requirement(s) in question.

These ~~Sanction~~ Guidelines utilize the ~~VSLs~~ violation severity levels, ~~which that have been established¹¹ by NERC for requirements of the reliability standards. Up to four levels can be defined for each requirement; the levels~~ have been designated as: Lower, Moderate, High, and Severe.

4.23.2 Setting of the Base Penalty Amount

NERC or the regional entity will set the Base Penalty Amount for the violation. The Base Penalty Amount ~~set~~ for the violation may be set at the highest figure of the initial value range determined pursuant to Section ~~4.13.1~~, above. However, NERC or the regional entity may set the Base Penalty Amount at or below the lowest figure of the initial value range in light of two specific circumstances regarding the violation and the violator, specifically:

- a. The applicability of the ~~VRF~~ Violation Risk Factor of the violation to the specific circumstances¹² of ~~the~~ violator.
- b. Whether this is an inconsequential first violation by the violator of the reliability standard(s) in question.

As noted in Section ~~3.12.7~~, NERC or the regional entity will consider the time horizon ~~for~~ involved with the violation when setting the Base Penalty Amount for the violation. ~~As also noted in Section 3.12 this consideration will be documented for inclusion in the Notice of Penalty issued for the violation.~~

The penalty amount resulting from ~~the~~ this review will be the Base Penalty Amount that is used as the basis for further adjustment pursuant to the factors discussed in the next section (~~3.34.3~~) of this document.

4.2.13.2.1 Applicability of the Violation Risk Factor

~~Violation Risk Factors~~ VRFs are assigned to standards² requirements as indicators of the expected risk or harm to the bulk power system posed by the violation of a requirement by a typical or median entity that is required to comply. NERC or the regional entity may consider the specific circumstances of the violator to determine if the violation of the requirement in question actually produced the degree of risk or harm anticipated by the ~~VRF~~ Violation Risk Factor. If that expected risk or harm was not or would not have been produced, NERC or the regional entity may set the Base Penalty Amount to a value it (i) deems appropriate and (ii) is within the initial value range set above pursuant to Section ~~3.14.1~~.

4.2.23.2.2 First Violation

If the actual or foreseen impact of the violation is judged to be inconsequential by NERC or the regional entity and the violation is the first incidence of violation of the requirement in question by the violator, NERC or the regional entity may at its discretion: (i) set the Base Penalty Amount to a value it deems appropriate within the initial value range set above

¹¹ ~~Assignment of these levels will be complete and filed with the Commission by March 1, 2008 in accordance with FERC Order on Compliance Filing dated June 7, 2007 [Docket No. RR06-1-007].~~

¹² The circumstances of the violator will include but not be limited to, ~~as appropriate~~: the violator's aggregate and net load~~s~~, ~~and~~ interconnections characteristics such as voltage class and transfer ratings;

pursuant to Section 43.1, or (ii) excuse the penalty for the violation (i.e. set the Base Penalty Amount to \$0\$).

This relief will generally not be afforded to the violator if NERC or the regional entity determines that the violator has a poor compliance program or compliance record; e.g. the circumstances discussed in Section 43.3.1 have been an aggravating factor in one or more previous penalties assessed ~~against~~ the violator.

This relief will not be available for consideration in those instances where the violator ~~has~~ concealed or attempted to conceal the violation, failed or refused to comply with compliance directives from NERC or the regional entity, or intentionally violated for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the bulk power system.

4.33.3 Application of Adjustment Factors

Adjustment factors provide ~~an~~the opportunity ~~for~~ NERC or the regional entity to adjust the base penalty to reflect the specific facts and circumstances material to each violation and violator.

These guidelines recognize and require that, as a minimum, NERC or the regional entity consider the following:

- a. Repetitive violations and the violator's compliance history
- b. Failure of the violator to comply with compliance directives
- c. Self-~~reporting disclosure~~ and voluntary mitigating activities~~corrective action~~ by the violator
- d. Degree and quality of cooperation by the violator in the violation investigation and in any remedial action directed for the violation
- e. The presence and quality of the violator's compliance program ~~quality~~

f. Settlement

~~f.g.~~ Any attempt by the violator to conceal the violation

~~g.h.~~ Intentional violations

~~i. Any increment to the penalty recommended by a regional entity hearing body due to the violator's frivolous or dilatory conduct in the hearing process~~

~~h.j.~~ Extenuating circumstances

~~Two documents issued by United States regulatory agencies will be instructive to NERC and the regional entities when they are determining penalties for violations of the reliability standards: the FERC's Policy Statement on Enforcement issued on October 20, 2005 under Docket No. PL06-00, and; U.S Securities and Exchange Commission (SEC) Release No. 44969 under the Securities and Exchange Act of 1934, issued on October 23 2001, also concurrently issued by the SEC as Release No. 1470 under Accounting and Auditing Enforcement.~~

NERC or the regional entity may also consider other ~~additional~~ factors it deems appropriate under the circumstances, as long as their use is clearly identified and adequately justified. The effect of using these factors ~~must will also~~ be fully and clearly disclosed in the Notice of Penalty and supporting documents.

4.3.13.3.1 Repetitive Violations and Compliance History

~~A bulleted point under Paragraph 20 of the FERC Policy Statement on Enforcement highlights repeat offenses by a violator.~~ If a violator has had repetitive infractions of the same or a closely-related reliability standard requirement, particularly within a time frame defined within the standard(s) or deemed appropriate by NERC or the regional entity in the absence

of ~~a definition of the standard(s) defining the a~~ time frame ~~in the relevant standard~~, NERC or the regional entity shall consider ~~an~~some increase to the penalty. ~~In evaluating the violator's compliance history, NERC or the regional entity will take into account previous violations by affiliates of the violator, particularly violations of the same or similar reliability standard requirements, and will evaluate whether any such prior violations reflect recurring conduct by affiliates that are operated by the same corporate entity or whose compliance activities are conducted by the same corporate entity.~~

The term “violation reset time period” of a standards requirement may be defined or implied within a given standard ~~asto describe~~ the period of time generally required for a violator to continue operations without ~~incidence of further violation(s) of the violating a R~~reliability ~~S~~standards, particularly ~~of the initial reliability standard violated~~ or a similar standard ~~violated, in order to avoid~~Expiration of this period would serve to negate or minimize consideration of the violator’s previous violation history for sanctioning purposes in the event of a subsequent violation(s). NERC ~~orand~~ the ~~R~~regional ~~entity~~Entities shall exercise appropriate judgment and discretion in this regard as warranted ~~by the facts and circumstances~~, particularly where no reset time period is specifically set within the standard violated. Repeat violations within violation reset time periods are aggravating factors in the determination of ~~the penalty or~~sanctioning. ~~Accordingly, a~~ violation history of no violations will produce no mitigation of the penalty otherwise determined; a violation history of infrequent minor violations of lesser risk requirements assessed lower ~~VSLsviolation severity levels~~ may result in small or no increase; ~~and~~ a history of more frequent violations or previous violations of higher risk requirements assessed more severe ~~VSLsviolation severity levels~~ will generally incur commensurately larger increases.

4.3.23.3.2 Failure to Comply with a Remedial Action Compliance Directives or with Agreed Corrective or Mitigating Activity

If the violator has violated reliability standard requirements ~~despitewithstanding having received~~ related ~~remedial action compliance~~ directives ~~or despite having agreed to corrective or mitigating activities for prior violations, such as for remedial action from NERC or the regional entity,~~ NERC or the regional entity shall consider ~~increasing~~some increase to the penalty.

4.3.33.3.3 Self-Reporting Disclosure and Voluntary Mitigating Activities Corrective Action

NERC or the regional entity shall consider whether a violator self-~~reported~~dislosed the violation prior to detection or intervention by NERC or the regional entity, and any ~~mitigating activities voluntarily~~action undertaken by the violator to correct the ~~situationnoncompliance~~. ~~NERC or the regional entity will be instructed in their consideration of these factors by the text of Paragraphs 24 and 25 of the FERC Policy Statement on Enforcement.~~ As they deem warranted, NERC or the regional entity may reduce the violator’s penalty ~~consistent with the cited sections of the FERC policy.~~

4.3.43.3.4 Degree and Quality of Cooperation in Violation Investigation and Remedial Action

NERC or the regional entity shall consider the degree and quality of the violator’s cooperation with NERC or the regional entity ~~in the investigation of the violation and any remedial action arising from it. NERC or the regional entity will be instructed in making their determination on this by the text of Paragraphs 26 and 27 of the FERC Policy Statement on Enforcement.~~ NERC or the regional entity may adjust the violator’s penalty as they deem ~~appropriate, which warranted commensurate with the cited sections of the FERC policy statement.~~ ~~This~~ may result in an increase, a decrease or no change to the penalty.

4.3.53.3.5 Presence and Quality of **Violator's Internal Compliance Program**

NERC or the regional entity shall consider the presence and quality of the violator's internal compliance program. ~~NERC or the regional entity will be instructed in making their determination on this factor by the text of Paragraphs 22 and 23 of the FERC Policy Statement on Enforcement. As they deem warranted,~~ NERC or the regional entity may reduce the violator's penalty as they deem appropriate, consistent with the cited sections of the FERC policy. ~~Consistent with the FERC policy-~~ However, NERC or the regional entity may not increase a violator's penalty specifically/solely on the grounds that the violator has no internal compliance program or a poor quality program.

3.3.6 Settlement

NERC or the regional entity may consider a reduction in penalty if the violator resolves the violation through settlement, taking into account the speed with which settlement was reached.

4.3.63.3.7 Violation Concealment and Non-Responsiveness

~~Two bulleted points under Paragraph 20 of the FERC Policy Statement on Enforcement highlight misrepresentation of material facts and resistance or impediment to inquiry of a violation. When determining a penalty NERC or the regional entity shall consider any concealment or attempt to conceal the violation, or information needed to investigate the violation, on the part of the violator. NERC or the regional entity shall consider a significant increase to the penalty if the violator concealed or attempted to conceal the violation or information necessary to investigate the violation. The presumption in such circumstances is to double, some significant increase to the penalty shall be considered; doubling of the penalty otherwise determined is suggested. Conduct of this nature on more than one occasion regarding one violation, or with respect to more than one violation, should incur an even larger increase to the penalty otherwise determined. Additionally, NERC or the regional entity shall consider an increase to the penalty if the violator resisted or impeded the discovery and review of a violation.~~

4.3.73.3.8 Intentional Violation

~~Another bulleted point under Paragraph 20 of the FERC Policy Statement on Enforcement highlights offenses as willful action by a violator. When determining a penalty, NERC or the regional entity shall consider if the violator intentionally violated the reliability standard without just cause; i.e., for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the bulk power system. If the violator engaged in such conduct, a some significant increase to the penalty shall be considered; the presumption in such cases is to doubling of the penalty otherwise determined is suggested. If conduct of this nature has been detected on more than one occasion, NERC or the regional entity should assess an even larger increase to the penalty otherwise determined.~~

NERC or the regional entity will consider violations attributable to an economic choice to violate as intentional violations. ~~Consistent with the FERC Policy Statement on Enforcement a~~Any penalty issued involving conduct of this manner shall ~~at~~ a minimum disgorge any profits or economic benefits the violator acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

3.3.9 Increment Added to a Penalty by a Compliance Enforcement Authority Hearing Body

Section 1.2.16 of the NERC Hearing Procedures, Attachment 2 to Appendix 4C of the Rules of Procedure, allows a Compliance Enforcement Authority Hearing Body to increase the penalty that the Hearing Body otherwise determines for a reliability standard violation, if the

Hearing Body finds that the violator has filed frivolous or unsupported pleadings, made frivolous or unsupported arguments, engaged in tactics intended to delay the proceeding before the Hearing Body or to increase the cost of the proceedings for any other participant, or been dilatory or unresponsive in responding to discovery requests in the proceeding. NERC will consider any such determination by the Hearing Body in reviewing the aggregate penalty determined by the Hearing Body.

4.3.83.3.10 Extenuating Circumstances

NERC or the regional entity will consider ~~any if there are~~ extenuating circumstances regarding the violation that justify reduction or elimination of the penalty otherwise determined.

~~Consideration of adjusting a penalty for this factor would be inconsistent with NERC or the regional entity increasing a penalty after consideration of any other factor included in this section of these guidelines, such as intentional violation without justifiable cause or concealment or attempt to conceal.~~

4.43.4 Setting of the Final Penalty Amount

The Adjusted Penalty Amount determined in Step 2 may be reviewed in light of the violator's financial ability to pay the penalty. ~~Also, if~~ the violation ~~was resulted from~~ an economic choice, NERC or the regional entity will ~~re~~confirm that the penalty ~~set~~ will disgorge any unjust profits or economic benefits. At the conclusion of this review, if applicable, NERC or the regional entity will set the Final Penalty Amount ~~will be set~~.

4.4.13.4.1 Violator's Financial Ability to Pay¹³

At the written request of the violator, NERC or the regional entity will review the penalty determined in Step 2 in light of relevant, verifiable information that the violator provides regarding ~~its~~~~their~~ financial ability to pay. At the conclusion of this review NERC or the regional entity may:

1. Reduce the penalty ~~payable~~ to an amount that NERC or the regional entity, ~~as applicable,~~ deems that the violator has the financial ability to pay, or;
2. Excuse the penalty amount payable, or;
3. Sustain the penalty amount determined in Step 2.

~~Where the penalty amount has been reduced or excused, If~~ NERC or the regional entity reduces or excuses the penalty, NERC or the regional entity shall consider the assessment of appropriate non-monetary sanction(s) as a substitute or an alternative for the penalty amount ~~otherwise considered appropriate that has been excused or by which the penalty has been reduced.~~

4.4.23.4.2 Reconfirm~~ation~~ of Disgorgement of Unjust Profit or Gain

Notwithstanding the application of any other consideration or factor applicable to the determination of a just and reasonable penalty for the violation, if the violation in question involved an economic choice to violate a reliability standard, NERC or the regional entity shall ~~re~~confirm that the penalty ~~set~~ meets the requirements set forth in ~~Parts 3.15 and 3.16 of~~ Sections 3.10 and 2.11 of this document.

¹³ NERC anticipates that this will be the primary vehicle for addressing the ability to pay of "not-for-profit" and other similar organizations.

5.4. Determination of Non-Monetary Sanctions

The imposition of sanctions is not ~~limited~~~~bounded~~ to monetary penalties. Non-Monetary sanctions ~~applied must~~~~may~~ be applied with the objective of promoting reliability and compliance with the reliability standards. Non-monetary sanctions may include, ~~but not be limited to, the following:~~ limiting activities, functions, or operations, or placing the violator on a reliability watch list of significant violators.

~~a. Limitations on activities, functions, or operations~~

~~a. Placing an entity on a reliability watch list composed of major violators~~

6. Remedial Action

6.1 Definition and Anticipated Use

Remedial actions are directives that may be issued to a bulk power system owner, operator, or user to resolve an alleged violation of a reliability standard by addressing conditions, practices, or any other relevant action or activity that is immediately necessary to terminate or correct to protect the reliability of the bulk power system from an imminent threat. A remedial action directive will be issued when NERC or the regional entity identifies an alleged violation of a reliability standard that must be corrected immediately to protect the reliability of the bulk power system from the imminent threat that NERC or the regional entity has identified.

NERC or the regional entity will generally employ remedial action directives where they deem it necessary to clearly specify minimum corrective actions that the subject of the remedial action directive must take; additionally or alternatively a remedial action directive may clearly specify timelines within which the subject must take specified actions, complete specified tasks, or achieve specified outcomes. Also, to the extent NERC or the regional entity is authorized to do so, a remedial action directive may communicate penalties, sanctions, or further remedial actions that may be imposed should the specific remedial action directive not be complied with by those to whom it has been issued. As a rule of thumb, remedial action directives will be of use to NERC or the regional entity whenever any significant combination of specificity, clarity, or time is of the essence to address a threat to the reliability of the bulk power system brought on by lack of or inadequate compliance to the reliability standards.

6.2 Compliance Requirements

In the United States, the Commission has concluded that owners, operators, or users of the bulk power system must comply with remedial action directives issued to them by NERC or a regional entity. Noncompliance with a remedial action directive may result in a substantially increased penalty or sanction.

Remedial action directives issued by NERC or the regional entity will include a deadline by which time the owner, operator, or user must complete requirements set out in the order, and by which time the entity must demonstrate compliance to the remedial action directive to NERC or the regional entity that issued it. Failure or refusal to meet the requirements or deadlines set out in a remedial action directive may itself result in further remedial action directives or significantly increased penalties or sanctions by NERC or the regional entity.

6.3 No Obligation to Issue

NERC or the regional entity may, but is not obligated, to issue remedial action directives. Lack of being issued a remedial action directive does not relieve a bulk power system owner, operator, or user from any responsibilities they otherwise have to comply or maintain compliance with requirements of the reliability standards. Remedial action directives will be used by NERC or the regional entities only as they deem warranted, when they deem warranted.

6.4 Scope of Application

The scope of remedial action directives issued by NERC or the regional entity will be limited to conditions, practices, or any other relevant actions or activities resulting in noncompliance, or that NERC or the regional entity considers at significant risk of becoming noncompliant, to requirements of the reliability standards, and that present an imminent threat to the reliability of the bulk power system. However, beyond merely directing compliance or improved compliance with standards' requirements, where NERC or the regional entity is authorized to do so, the directive may also stipulate how compliance or the improvement to compliance is to be achieved.

6.5 Availability

In the United States, the Commission has interpreted the Federal Power Act to authorize the NERC or the regional entity can issue a remedial action directive prior to completion of the confirmation review of a probable violation, or prior to the determination of a penalty or sanction for that violation. The Commission also concluded it is not necessary for NERC or the regional entity to acquire the Commission's or other regulators' approval prior to issuing remedial action directives. Accordingly, NERC or the regional entity may issue remedial action directives to entities in the United States whenever they deem it necessary or otherwise warranted to do so. Also, NERC or the regional entity may issue remedial action directives to entities in the United States regarding a violation that is immediately necessary to terminate or correct to protect the reliability of the bulk power system from an imminent threat, irrespective of whether that violation is ultimately verified or dismissed by NERC or the regional entity's investigation of the violation.

6.6 No Impact on Confirmation of Violation, or Penalties or Sanctions

Remedial action directives issued regarding a violation, in particular any costs incurred by the violator to comply with any such directive, will not be considered when reviewing whether the aggregate of any penalties and sanctions levied for that violation bear a reasonable relation to the seriousness of the violation. Also, any remedial action directives issued with respect to a violation will not influence the outcome of the confirmation review of that violation nor the determination of penalties or sanctions for that violation; ordering a violator to correct what needs correcting anyway is no grounds for dispelling a violation nor reducing or eliminating a penalty or sanction that would otherwise be determined appropriate for the violator for that violation.

6.7 Types of Remedial Actions

NERC or the regional entities may issue remedial action directives to correct compliance with NERC or regional reliability standards and reduce or eliminate imminent threats to the reliability of the bulk power system. Examples of remedial actions include:

- a. Specifying operating or planning criteria, limits, or limitations
- b. Requiring specific system studies
- c. Defining operating practices or guidelines
- d. Requiring confirmation of data, practices, or procedures through inspection testing or other methods
- e. Requiring specific training for personnel
- f. Requiring development of specific operating plans

Appendix A: Base Penalty Amount Table

The following lists the Base Penalty amounts corresponding to combinations of **V**iolation **R**isk **F**actor and **V**iolation **S**everity **F**actor.

Violation Risk Factor	Violation Severity Level							
	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	Low	High	Low	High	Low	High	Low	High
Lower	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
Medium	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
High	\$4,000	\$125,000	\$8,000	\$300,000	\$12,000	\$625,000	\$20,000	\$1,000,000

NOTE: This table describes the amount of penalty that could be applied for each day that a violation continues, subject to the considerations of Section 3.21 regarding frequency and duration of violations.

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North American Electric Reliability Corporation

Compliance Monitoring and Enforcement Program

APPENDIX 4C TO THE RULES OF PROCEDURE

Effective: [DATE]

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ATTACHMENT 1 – PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

**ATTACHMENT 2 – COMPLIANCE ENFORCEMENT AUTHORITY HEARING
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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. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

1.1 Definitions

Capitalized terms used in this Compliance Program shall have the meanings set forth in Section 200 and Section 1501 of the NERC Rules of Procedure or as set forth below:

- 1.1.1** Alleged Violation: A Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, 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; and 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 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.

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- 1.1.9** Confirmed Violation: An Alleged Violation for which ~~(1) an the Registered eEntity has:-(1) accepted the Notice of Alleged Violation and Proposed Penalty or Sanction or other notification of the Alleged Violation finding of the violation by a Regional Entity or NERC and will not seek an appeal,~~ or (2) ~~there has been the issuance of a final and non-appealable order finding a violation, penalty or sanction completed the hearing and appeals process within NERC,~~ or (3) ~~allowed the period time~~ for requesting a hearing or ~~submitting an appeal has to expired and the Registered Entity has not contested the Alleged Violation or penalty in any filing with the Compliance Enforcement Authority,~~ or (4) ~~the Registered Entity has admitted or not contested to the Alleged vViolation~~ in a settlement agreement.
- 1.1.10** End Date: The last date of the period to be covered in a Compliance Audit.
- 1.1.11** 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) or enabling the Compliance Enforcement Authority to ascertain the Registered Entity's compliance.
- 1.1.12** Mitigation Plan: An action plan, ~~required when a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority decision, settlement agreement, or otherwise, that is~~ developed by the Registered Entity to (1) correct a violation of a Reliability Standard and (2) prevent re-occurrence of the violation.
- 1.1.13** NERC Compliance Registry: A list, maintained by NERC pursuant to Section 500 of the NERC Rules of Procedure and Appendix 5B, the NERC *Statement of Compliance Registry Criteria*, of the owners, operators and users of the Bulk Power System, and the entities registered as their designees, that perform one or more functions in support of reliability of the Bulk Power System and are required to comply with one or more requirements of Reliability Standards.
- 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 Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.

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- 1.1.15** Notice of Alleged Violation and Proposed Penalty or Sanction: A notice issued by the Compliance Enforcement Authority to a Registered Entity pursuant to Section 5.3.
- 1.1.16** Notice of Completion of Enforcement Action: A notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10, stating that an enforcement action is closed.
- 1.1.17** Notice of Confirmed Violation: A notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards, ~~as a result of (1) the Registered Entity accepting a Notice of Alleged Violation and the proposed penalty or sanction, or (2) the finding of a violation through a hearing and appeal, or (3) the expiration of the period for requesting a hearing or an appeal, or (4) the Registered Entity admitting the violation as part of an executed settlement agreement.~~
- 1.1.18** Notice of Penalty: A notice prepared by NERC and filed with FERC, following approval by NERC of a Notice or other notification of Confirmed Violation or a settlement agreement, stating the penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement.
- 1.1.19** Notice of Possible Violation: A notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a Possible Violation has been identified, (2) provides a brief description of the Possible Violation, including the Reliability Standard requirement(s) and the date(s) involved, and (3) instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation.
- 1.1.20** 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.
- 1.1.21** Possible Violation: The identification, by the Compliance Enforcement Authority, ~~using one of the Compliance Monitoring and Enforcement Processes in Section 3.0,~~ of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity.
- 1.1.22** Preliminary Screen: An initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists, and

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consisting of an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, ~~and~~ (2) the Reliability Standard requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered, and (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed.

- 1.1.23** Regional Implementation Plan: An annual plan, submitted ~~by on or about October-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 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.
- 1.1.24** Registered Entity: An owner, operator, or user of the Bulk Power System, or the entity registered as its designee for the purpose of compliance, that is included in the NERC Compliance Registry.
- 1.1.25** 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 or actual threat.
- 1.1.26** 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.
- 1.1.27** Self-Certification: An attestation by a Registered Entity that it is compliant or non-compliant of compliance or non-compliance with a Reliability Standard requirement that is the subject of the Self-Certification, that it does not own facilities that are subject to the Reliability Standard requirement, or that the Reliability Standard requirement is not applicable to the Registered Entity for which Self-Certification is required by the Compliance Enforcement Authority and that is included for monitoring in the Regional Implementation Plan.
- 1.1.28** Self-Reporting: A report by a Registered Entity stating ~~(1)~~ that the Registered Entity believes it has violated a Reliability Standard, ~~and~~

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~~(2) the actions that have been taken or will be taken to resolve the violation.~~

1.1.29 Spot Checking: A process in which the Compliance Enforcement Authority requests a Registered Entity to provide information (1) to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards, or (2) as a random check, or (3) in response to ~~events, as described in the Reliability Standards or based on~~ operating problems, ~~or~~ system events, or risk-based assessments.

2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

NERC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure and Appendix 5B, *Statement of Compliance Registry Criteria*. Organizations are responsible to register and to comply with Reliability Standards if they are owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II of Appendix 5B, and are material to the reliable operation of the Bulk Power System as defined by the criteria and notes in Appendix 5B. Regional Entities shall (i) develop and provide to NERC information to assist NERC to register organizations responsible for complying with Reliability Standards, and (ii) in the event of a registration appeal to NERC or an Applicable Governmental Authority, provide information requested by NERC concerning how the Registered Entity meets the registration criteria or is otherwise material to the reliability of the Bulk Power System.

NERC shall notify organizations of their inclusion on the NERC Compliance Registry and shall maintain the NERC Compliance Registry on its web site. NERC shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to reliability functions for which the Registered Entity is registered. Each Registered Entity shall inform NERC or the applicable Regional Entity promptly of changes to the Registered Entity's registration information including ownership, registration status, address and other contact information, and name of designated compliance contact. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

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

NERC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable

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~~Governmental Authority. Any such provision of information to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure. 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.~~

3.0 COMPLIANCE MONITORING ~~AND ENFORCEMENT~~ PROCESSES

The Compliance Enforcement Authority will monitor, ~~assess, and enforce~~ Registered Entities' compliance with Reliability Standards using the compliance monitoring processes described in this Section ~~3.0 to collect information in order to make assessments of compliance. These processes are described in Sections 3.1 through 3.8 below. If a compliance monitoring process described in this Section reveals a potential noncompliance with a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8. In addition, if the Compliance Enforcement Authority obtains evidence or information of a potential noncompliance with a Reliability Standard through any other means, including but not limited to an Exception Report or other report of noncompliance that a Registered Entity is required to submit in accordance with the terms of a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary Screen of the information in accordance with Section 3.8. If the Preliminary Screen results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists and the Compliance Enforcement Authority will proceed in accordance with Section 5.0, Enforcement Actions.~~

~~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.~~

Compliance Monitoring and Enforcement Program

The ~~C~~ompliance ~~monitoring processes in this Section-Program~~ requires timely information, reports and data from Registered Entities to effectively monitor compliance with Reliability Standards. The Compliance Enforcement Authority has authority to collect documents, data and information in the manner it deems most appropriate, including removing documents, data and information from the Registered Entity's location in accordance with appropriate security practices. If documents, 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 partyRegistered Entity believes that a request for documents, data or information is unreasonable, the partyRegistered Entity may request a written determination from the NERC General Counseleompliance 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.

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., which may include, for exampleincluding 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:⁺

- The Compliance Enforcement Authority postsdistributes the Annual Audit Plan (developed in coordination with NERC) ~~to the Compliance Audit Participants and NERC.~~

⁺~~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 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~~ninety (90) days prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the Compliance Audit and the Reliability Standards to be evaluated, 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 new audit team member(s) (see Section 3.1.5.4).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format and by the Required Date 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.~~
- ~~Theis~~ audit team shall include ~~conductsing~~ conducting an exit briefing with the Registered Entity, ~~providesing~~ providing for a review of the audit report with the Registered Entity before it is finalized, and completesissuing ~~issuing~~ an audit report in accordance with Section 3.1.6; including an assessment of compliance with the Reliability Standards, to the Compliance Enforcement Authority.
- If the audit team identifies evidence of a potential noncompliance with a Reliability Standard requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.
- ~~The Compliance Enforcement Authority reviews the report developed by the audit team and completes a Preliminary Screen for any Possible Violations of Reliability Standards, based on the potential noncompliances with Reliability Standards (if any) identified in the report.~~
- ~~If the Compliance Enforcement Authority concludes that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.~~
- ~~The Compliance Enforcement Authority provides the final audit report to the Registered Entity and to NERC.~~

3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule

Compliance Monitoring and Enforcement Program

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~~October 1 of the year preceding 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 schedule~~s~~, ~~methods~~, and ~~data requirements for the audit~~. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities for reasonable cause~~to avoid unnecessary burdens~~.

Revisions and additions to a Regional Entity Annual Audit Plan shall be communicated to and approved by NERC, and shall be communicated to the Registered Entity~~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 Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure and based on criteria established by NERC. In addition to scheduled Compliance Audits, the Compliance Enforcement Authority~~Additionally, (i) may initiate~~ an unscheduled Compliance Audit of any Registered Entity~~(i) may be initiated~~ at any time ~~by the Compliance Enforcement Authority~~ if the Compliance Enforcement Authority reasonably determines~~ed it~~ to be necessary to ensure the Registered Entity's compliance with Reliability Standards, and (ii) shall ~~be initiated by the an unscheduled Compliance Audit Enforcement Authority or by NERC~~ if directed by FERC. The Compliance Enforcement Authority shall notify NERC and FERC ~~P~~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. If NERC initiates the unscheduled Compliance Audit, it shall notify the appropriate Regional Entity or Entities.~~ The Registered~~Entity~~Compliance Enforcement Authority shall ~~provide~~receive at least ten (10) business days advance notice to the Registered Entity that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team.~~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 3.1.5.2, 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

3.1.4.1 Reliability Standards

A Compliance Audit shall include those Reliability Standards applicable to the Registered Entity that are identified in the NERC Implementation Plan for the current year, and may include other Reliability Standards applicable to the Registered Entity whether or not they~~that~~ are identified in the Regional Entity's Regional Implementation Plan for the current year.~~The Compliance Audit may include any other Reliability Standards that are applicable to the Registered Entity.~~

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3.1.4.2 Period Covered

The Registered Entity's data and information ~~should~~must show compliance with the Reliability Standards that are the subject of the Compliance Audit for the entire period covered by the Compliance Audit. The Compliance Enforcement Authority will indicate the beginning and End Date of the audit period in its notice of the Compliance Audit. The audit period begins ~~with~~ the day after the End Date of the prior Compliance aAudit by the Compliance Enforcement Authority ~~ended~~ (or the later of June 18, 2007 or the date the Registered Entity's ~~date of registration~~ became subject to compliance with the Reliability Standards if the Registered Entity has not previously been subject to a Compliance Audit), ~~and ending with the End Date for the Compliance Audit. However, if another Compliance Monitoring and Enforcement process has been conducted with respect to the Registered Entity subsequent to the date that would otherwise be the start of the period, the period covered by the Compliance Audit may, in the Regional Entity's discretion, begin with the completion of that Compliance Monitoring and Enforcement process for those Reliability Standards requirements that were the subject of the Compliance Monitoring and Enforcement process. The Compliance Enforcement Authority may modify the beginning date of the audit period for any given Reliability Standard requirement based on an intervening compliance monitoring process.~~ The End Date may be a predetermined specific date or may be stated generally as the last day ~~will be stated in the Compliance Enforcement Authority's notification of the Compliance Audit issued to the Registered Entity pursuant to Section 3.1.1.~~

The Registered Entity will be expected to demonstrate compliance for the entire period described above. ~~However, if~~ a Reliability Standard specifies a document retention period that does not cover the entire period described above, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific information that has rightfully not been retained based on the retention period specified in the Reliability Standard. However, in such cases, the Compliance Enforcement Authority will require the Registered Entity to demonstrate compliance through other means.

3.1.4.3 Review of Mitigatingon Activities Plans

The Compliance Audit ~~will~~may include a review of any mitigating activities~~Mitigation Plans~~ which the Registered Entity has not yet completed, for the purpose of determining whether the Registered Entity is making adequate progress towards completion of the mitigating activities~~Mitigation Plan~~.

3.1.5 Conduct of Compliance Audits

3.1.5.1 Composition of Compliance Audit Teams

The audit team shall be comprised of ~~staff from~~members whom the Compliance Enforcement Authority has determined have the requisite knowledge and skills to conduct the Compliance Audit, and such other persons as are included in the audit team pursuant to Section 3.1.5.3, and The Compliance Audit team may include (i) contractors and industry subject matter experts as ~~approved~~determined by the Compliance Enforcement Authority ~~to be appropriate to comprise a sufficient audit team,~~ (ii) NERC staff members (which may include contractors to NERC), (iii) ~~compliance staff members of other Regional Entities, and~~ (iv) representatives of FERC and other

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Applicable Governmental Authorities so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction. The audit team 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.

3.1.5.2 Requirements for Compliance Audit Team Members

Each audit team member must:

- Be free of conflicts of interests in accordance with Compliance Enforcement Authority policies. ~~For example, e~~ 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.
- Prior to the Compliance Audit, the Compliance Enforcement Authority shall provide confirmation to the Registered Entity that all audit team members have ~~Provide copies of executed confidentiality agreements or acknowledgments to be provided to the Registered Entity prior to the audit.~~

3.1.5.3 Compliance Audit Observers ~~or~~ and Other Attendees ~~Participants~~

In any Regional Entity Compliance Audit of a Registered Entity, in addition to the audit team members, the following may participate as observers: (i) NERC Staff (which may include contractors to NERC) ~~may participate either as observers or as audit team members;~~ (ii) other members of the Regional Entity's Compliance staff, ~~in addition to the audit team, may participate as observers;~~ (iii) with the permission of the Regional Entity, compliance staff members of other Regional Entities ~~may participate either as observers or as audit team members;~~ and (iv) representatives of FERC and of other Applicable Governmental Authorities ~~may participate either as observers or as audit team members~~ so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction.

In addition, at the request of the Registered Entity being audited, the Regional Entity may allow attendance at the Compliance Audit by: (1) representatives of corporate affiliates of the Registered Entity being audited that are Registered Entities or that provide compliance services, support or oversight to the Registered Entity being audited, and (2) representatives of Registered Entities whose compliance activities are conducted by the Registered Entity being audited or by the same corporate entity that conducts the compliance activities of the Registered Entity being audited (e.g., representatives of other members of a Joint Registration Organization or of participants in a Coordinated Functional Registration pursuant to Section 500 of the Rules of

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Procedure). Each such additional attendee must execute a confidentiality agreement approved by the Regional Entity.

Compliance audit observers and attendees are not audit team members and do not participate in conducting the Compliance Audit or in making audit findings and determinations.

The Compliance Audit team leader or other staff of the Regional Entity conducting the Compliance Audit will communicate in advance with any observers or other attendees to ensure there are no undue disruptions to the audit, such as space limitations, no conflicts of interest, and no other considerations that in the judgment of the Compliance Audit team leader may be detrimental to the conduct and quality of the audit. If the Compliance Audit team leader identifies any such issues, he/she shall work with the proposed observers or attendees to facilitate observation in a less disruptive manner; or, alternatively, the Regional Entity Compliance staff will work with the proposed observers or attendees to schedule their participation in, observation of, or attendance at a different Compliance Audit in which such issues are not presented.

3.1.5.4 Registered Entity Objections to Compliance Audit Team

A Registered Entity subject to a Compliance Audit may object to any member of the audit team other than a member of NERC or FERC staff on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Any such objections must be provided in writing to the Compliance Enforcement Authority 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)

~~i~~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 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 Section 3.1 shall be read to limit the participation of NERC staff in the Compliance Audit or to limit the participation of FERC staff in a Compliance Audit of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction.

3.1.6 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 evidence ~~of potential possible~~ noncompliance with Reliability Standards by the Registered Entity found by the audit team; identify any ~~Mitigation Plans or Remedial Action Directives,~~ Mitigation Plans or other mitigating activities which have been completed or pending in the year of the Compliance Audit; and identify ~~if the nature of~~ any Confidential Information has been redacted. ~~—A separate~~

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~~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~~ considers corrections based on comments of the Registered Entity, ~~and provide the final~~ izes the audit report, ~~to the Compliance Enforcement Authority who will review the report and assess compliance with the Reliability Standards~~ and provides the Registered Entity with a copy of the final report ~~on or before the date the final report is provided to NERC.~~ The Compliance Enforcement Authority ~~Regional Entities will~~ provides the final report to NERC, which ~~will~~ in turn provides 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. The provision of the final report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure. ~~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 or Regional Entity requirements.

NERC will not publicly post the final audit report for at least five (5) business days following receipt. ~~Ifn the event~~ the audit report identifies any Possible Violations of one or more Reliability Standards, the final audit report, or pertinent part thereof identifying the Possible Violations, shall not be released to the public by NERC ~~or the Compliance Enforcement Authority~~ until (i) the Possible Violation is dismissed prior to becoming a Confirmed Violation, or (ii) NERC submits a Notice of Penalty to FERC or other Applicable Governmental Authority, or (iii) the Registered Entity executes ~~admits to a violation or enters into~~ a settlement agreement with the Compliance Enforcement Authority pursuant to Section 5.6.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as eCritical eEnergy iInfrastructure iInformation or eConfidential iInformation ~~(as defined in Section 1501 of the NERC Rules of Procedure)~~ shall be redacted from any public reports.

3.2 Self-Certifications

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

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~~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:²

- The Compliance Enforcement Authority posts and updates the reporting schedule containing the applicable reporting periods and informs Registered Entities. The Compliance Enforcement Authority and NERC will 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 in the form and manner, and by the Required Date, specified by the Compliance Enforcement Authority. The Self-Certification response may state that (i) the Registered Entity is in compliance with the Reliability Standard requirement, (ii) the Registered Entity is not in compliance with the Reliability Standard requirement, (iii) the Registered Entity does not own facilities that are subject to the Reliability Standard requirement, or (iv) the Reliability Standard requirement is not applicable to the Registered Entity.
- At a minimum, ~~the~~ Compliance Enforcement Authority reviews Self-Certifications of noncompliance 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, after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation. If the Compliance Enforcement Authority's review of the Self-Certification indicates a potential noncompliance with a Reliability Standard by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.~~

~~²If no Possible Violations are found, this process normally completes within sixty (60) days of the Compliance Enforcement Authority's receipt of data.~~

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Receipt of a Self-Certification by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, or not subject to, the Reliability Standard requirement.

3.3 Spot Check~~ing~~ing

Spot Check~~ing~~ing will be conducted by the Compliance Enforcement Authority. Spot Check~~ing~~ing may be initiated at the discretion of ~~by~~ the Compliance Enforcement Authority or as directed by NERC, 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 for reasons including but not limited to events, as described in the Reliability Standards, or to operating problems, or system events, or risk-based assessments, or on a random schedule.~~ ~~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 to the Spot Checking process by the Compliance Enforcement Authority as necessary.~~

3.3.1 Spot Check~~ing~~ing Process Steps

The process steps for Spot Check~~ing~~ing are as follows:³

- The Compliance Enforcement Authority shall issue a notification letter to ~~notifies~~ the Registered Entity that a Spot Check~~ing~~ing will be performed, ~~and~~ the reason for the Spot Check~~ing~~ing, and the scope of the Spot Check including the Reliability Standard requirements that will be covered, in accordance ~~with~~ the advance notice period specified by the Reliability Standard. If the Reliability Standard requirement does not specify an advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the Registered Entity to submit the information or make it available for review.
- The Compliance Enforcement Authority, as part of the notification package, during the advance notice period, notifies shall provide the Registered Entity with ~~of~~ the names and employment histories of the persons who will be conducting the Spot Check~~ing~~ing. The Compliance Enforcement Authority shall provide confirmation to the Registered Entity that the members of the Spot Check team have executed confidentiality agreements or acknowledgements. The Registered Entity may object to inclusion of any individual on the Spot Check~~ing~~ing team on the grounds specified in accordance with ~~Section 3.1.5.4.~~ Any such objections must be submitted to the Compliance Enforcement Authority 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 Section 3.1 ~~this step~~ shall be read to limit the participation of NERC ~~or FERC~~ staff on thein a Spot Check~~ing~~ing team or to limit the participation of FERC staff in a Spot Check of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction.

³~~If no Possible Violations are found, this process normally completes within ninety (90) days of the Compliance Enforcement Authority's receipt of data.~~

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- The Spot Checking may require submission of data, documentation, and information and or possibly an on-site review.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the date specified in the request.
- The ~~Compliance Enforcement Authority~~ Spot Check team conducts a reviews of the information submitted to determine compliance with the Reliability Standards requirements and may request additional data and/or information if necessary ~~for a complete assessment of compliance~~.
- If the Spot Check team's review of the information submitted indicates a potential noncompliance with a Reliability Standard requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen pursuant to Section 3.8.
- The Spot Check team ~~Compliance Enforcement Authority~~ prepares a draft Spot Check report ~~reviews its draft assessment of the Registered Entity's compliance with the Registered Entity~~ and provides the Registered Entity ten (10) business days ~~an opportunity for the Registered Entity~~ to comment on the draft assessment report.
- The ~~Compliance Enforcement Authority~~ Spot Check team considers any corrections based on the Registered Entity's comments, finalizes completes and documents the assessment of the Registered Entity for compliance with the Reliability Standard and provides the Spot Check report and provides it to the Registered Entity and to NERC indicating the results of the Spot Checking.
- If the Compliance Enforcement Authority is a Regional Entity, the Regional Entity provides the final report to NERC. NERC provides 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. The provision of the report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure. 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.

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- The report will not be publicly posted, or otherwise made publicly available, by the Regional Entity or by NERC.
- ~~□ If the Compliance Enforcement Authority concludes, after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.~~

3.4 Compliance Investigations

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

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

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

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or potential noncompliance with 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 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

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

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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 Investigation Process Steps

The process steps for a Compliance Investigation are as follows:⁵

- The Compliance Enforcement Authority ~~is notified or~~ becomes aware of circumstances indicating a Reliability Standard may have been or is being violated and determines whether a Compliance Investigation is warranted. Within ~~three (3)~~two (2) business days of the decision to initiate a Compliance Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Investigation, ~~(ii) instructs the Registered Entity~~the requirements to preserve all records and information relevant to the Compliance Investigation ~~and, where appropriate, the reasons for the Compliance Investigation,~~ and (ii) ~~provides a copy of the notice to~~notifies NERC ~~of the initiation of and the reasons for the Compliance Investigation. The~~While the Compliance Enforcement Authority may, at its discretion, notify the Registered Entity of the reasons for its Compliance Investigation may be expanded beyond the initial scope based on information obtained by the Compliance Enforcement Authority after initiation of; the Compliance Investigation, ~~as it unfolds, need not be limited to this scope.~~
- NERC assigns a NERC staff member to the Compliance Investigation as an observer or team member and to serve as a single point of contact for communications with NERC. Within ~~three (3)~~two (2) business days after NERC ~~receives~~is notified notice of the decision to initiate a Compliance Investigation, NERC will notify FERC and each other Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the Bulk Power System to which the Compliance Investigation relates. Any such notice to FERC or to another Applicable Governmental Authority will be provided in accordance with Section 8.0, Reporting and Disclosure. ~~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.~~

⁵~~If no Possible Violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Investigation.~~

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- ~~The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the Compliance Investigation team and their recent employment history. The Registered Entity may object to any individual on the Compliance Investigation team in accordance with Section 3.1.5.4; 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 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 Investigation, a Registered Entity subject to a Compliance Investigation may object to any member of the Compliance Investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority having reliability jurisdiction over the Registered Entity on the Compliance Investigation team. 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 Investigation of the Registered Entity.

- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date as specified in the request. If information is not received in the time and format requested, the Compliance Enforcement Authority may initiate the **Process for Non-Submittal of Requested Data in Attachment 1.**
- If necessary, the Compliance Investigation may include ~~an~~ on-site visits with interviews of the appropriate personnel and review of data.
- ~~In conducting the Compliance Investigation,~~ The Compliance Enforcement Authority may require the Registered Entity to (i) provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for information; and (ii) produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the matter(s) that are the subject of the Compliance Investigation, to be interviewed or to provide testimony under oath concerning such matters. The Compliance Enforcement Authority shall determine in each case (i) whether representatives of the Registered Entity shall be allowed to be present when an interview is taking place or testimony is being taken, and (ii) whether, and by what method, the interview or testimony shall be recorded; provided, that counsel for the person being interviewed or giving testimony may be present when the interview is being conducted or testimony is being taken (regardless of whether such counsel also represents the Registered Entity).

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- 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 completes the assessment of compliance with the Reliability Standard, ~~and/or approval of the applicable~~ which may include review of a Mitigation Plan or mitigating activities, ~~writes and provides a~~ distributes the report of the Compliance Investigation to NERC; and ~~notifies~~ the Registered Entity.
- If the Compliance Enforcement Authority ~~concludes~~, at any time during the Compliance Investigation, identifies a potential noncompliance with a Reliability Standard requirement by a Registered Entity, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8 and after completing a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Investigation pertained to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure. 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 limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

3.5 Self-Report~~ing~~

Self-Report~~ing is~~ are encouraged at the time a Registered Entity becomes aware (i) that it has of a violat~~ed~~ion of a Reliability Standard, or (ii) a change in the violation severity level of a previously reported violation has changed. Self-Report~~ing~~ of a violation of a Reliability Standard is are encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program and/or whether the violation is determined outside the pre-defined reporting schedule. If possible, and without delaying the Self-Report, a Self-Report may include the actions that have been taken or will be taken to resolve the violation.

3.5.1 Self-Report~~ing~~ Process Steps

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The process steps for Self-Reporting are as follows:⁶

- 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 ~~evaluate~~ determine compliance with the Reliability Standards and may request that 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, after~~ conducting a Preliminary Screen(s), of the Self-Report information in accordance with Section 3.8 that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.

3.6 Periodic Data Submittals

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, or as established by the Compliance Enforcement Authority, or on an as-needed basis. ~~Requests for data submittals will be issued by~~ The Compliance Enforcement Authority shall issue requests for Periodic Data Submittals to Registered Entities with in at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the Compliance Enforcement Authority will normally issue this 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:⁷

- The Compliance Enforcement Authority posts the current data reporting schedule on its web site and ~~informs~~ 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.

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

~~⁷If no Possible Violation(s) are found, this process generally completes within ten (10) business days of the Compliance Enforcement Authority's receipt of data.~~

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- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Dates 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 if necessary for a complete assessment or to demonstrate compliance.
- If the Compliance Enforcement Authority's review of the data submittal indicates a potential noncompliance with a Reliability Standard requirement by the Registered Entity, the Compliance Enforcement Authority performs a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

~~□ If the Compliance Enforcement Authority's assessment of the Registered Entity's compliance indicates there may be a Possible Violation, the Compliance Enforcement Authority provides an opportunity for the Registered Entity to comment on the assessment before it is finalized.~~

~~□ If the Compliance Enforcement Authority concludes, after conducting a Preliminary Screen(s), that there is a Possible Violation of a Reliability Standard, it shall send the Registered Entity a Notice of Possible Violation.~~

Receipt of a Periodic Data Submittal by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, or not subject to, the Reliability Standard requirement.

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.~~

3.8.3.7 Complaints

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. ~~A Regional Entity~~ The Compliance Enforcement Authority will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for initiating another ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process, 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 Compliance Enforcement Authority~~ 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.

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All anonymous Complaints will be reviewed and any resulting ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement processes conducted by NERC will be conducted in accordance with Section ~~3.8.23.7.2~~ 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~~ or if it provides sufficient basis for initiating another ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process. The ~~Regional Entity Compliance Enforcement Authority~~ 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 initiating another ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process is warranted, ~~the Compliance Enforcement Authority shall conduct~~ that ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process ~~will be conducted~~ in accordance with the applicable provisions of Section 3.0.

3.8.13.7.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows:⁸

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. ~~NERC and the Regional Entity shall post~~ ~~Aa~~ link to the Complaint reporting form ~~will be posted~~ on ~~their respective~~ ~~the NERC and Regional Entity~~ Web sites. The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment ~~regarding~~ ~~of~~ whether the initiation of another ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.
- If the Compliance Enforcement Authority determines that initiation of another ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process is warranted, it initiates the ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process in accordance with the applicable provisions of Section 3.0 ~~or Section 5.0~~; otherwise it takes no further action. The Compliance Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the initiation of the ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process. If the Compliance Enforcement Authority determines that initiation of another ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process 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, ~~and~~ whether another ~~C~~ompliance ~~M~~onitoring ~~and~~ ~~or~~ ~~E~~nforcement process is ~~warranted~~ ~~initiated~~ ~~or~~ ~~not~~.

3.8.23.7.2 Anonymous Complainant Notification Procedure

~~⁸If no Possible Violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.~~

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A ~~an~~ ~~anonymous~~ complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, and wishes to remain anonymous, can report the information and request that the complainant's identity not be disclosed.⁹ 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 ~~3.8.13.7.1~~. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting information indicating violations of Reliability Standards to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that initiation of another ~~C~~ompliance ~~M~~onitoring ~~and or E~~nforcement process is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

3.8 Preliminary Screen

If the Compliance Enforcement Authority obtains information, through one of the compliance monitoring processes described in this Section 3.0 or by any other means, that indicates a potential noncompliance with a Reliability Standard requirement, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance. The Preliminary Screen shall be conducted within five (5) business days after the Compliance Enforcement Authority identifies the potential noncompliance, except that (i) if the Compliance Enforcement Authority identifies the potential noncompliance during a Compliance Audit, the Preliminary Screen shall be conducted immediately following the exit briefing of the Registered Entity, and (ii) if the Compliance Enforcement Authority identifies the potential noncompliance during a Compliance Investigation, the Preliminary Screen shall be conducted immediately after the Registered Entity is first notified of the potential noncompliance identified by the Compliance Investigation.

A Preliminary Screen shall be limited to determining whether:

- (1) the entity allegedly involved in the potential noncompliance is a Registered Entity;
- (2) the Reliability Standard requirement to which the evidence of potential noncompliance relates is applicable to the entity, has been approved by the Applicable Governmental Authority, and is in effect at the time of the potential noncompliance; and
- (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation that is currently being processed.

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

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If the Preliminary Screen results in an affirmative determination with respect to the above criteria, a Possible Violation exists and the Compliance Enforcement Authority shall proceed in accordance with Section 5.0.

The Compliance Enforcement authority shall maintain records of all Preliminary Screens.

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 ~~on or about September~~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 ~~Program~~plan document. The NERC Implementation Plan will be posted on the NERC web site. NERC may update and revise the NERC Implementation Plan during the course of the year as necessary. Regional Entities have discretion to make modifications to the NERC Implementation Plan with respect to individual Registered Entities, based on a determination concerning the Registered Entity's past and current compliance performance. As these changes to the NERC Implementation Plan occur, Registered Entities that have previously been notified concerning the schedule and scope of Compliance Audits and other compliance monitoring processes may be required to make adjustments in response to these changes.

4.2 Regional Entity Implementation Plan

By ~~on or about October~~November 1 of each year, each Regional ~~Entity~~Entities will submit a Regional Implementation Plan for the following calendar year to NERC for review and approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's Web site. The Regional Entity may update and revise the Regional Entity Implementation Plan during the course of the year as necessary, with NERC approval, or as required by NERC. Regional Entities have discretion to make modifications to the Regional Entity Implementation Plan with respect to individual Registered Entities, based on a determination concerning the Registered Entity's past and current compliance performance. As these changes to the Regional Entity Implementation Plan occur, Registered Entities that have previously been notified concerning the schedule and scope of Compliance Audits and other compliance monitoring processes may be required to make adjustments in response to these changes.

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~~mitigating activities, and

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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~~mitigating activities imposed by the Regional Entity.

The imposition and acceptance of penalties and sanctions shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards.

~~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 director of enforcement.~~

The Compliance Enforcement Authority has authority to collect documents, data and information in the manner it deems most appropriate, including removing documents, data and information from the Registered Entity's location in accordance with appropriate security practices. If documents, data or information requested from a Registered Entity in connection with an enforcement process are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**. If a Registered Entity believes that a request for documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC General Counsel.

The following enforcement process is undertaken by the Compliance Enforcement Authority following identification, ~~through one of the Compliance Monitoring and Enforcement processes set forth in Section 3.0, of a Possible Violation~~ evidence of noncompliance with a Reliability Standard requirement by a Registered Entity.

5.1 Preliminary Screen

~~If the Compliance Enforcement Authority identifies or obtains evidence of potential noncompliance with a Reliability Standard, the Compliance Enforcement Authority shall perform a Preliminary Screen to determine whether there is a Possible Violation. A Preliminary Screen shall be limited to determining whether:~~

- ~~(i) the entity allegedly involved in the potential noncompliance is a Registered Entity; and~~
- ~~(ii) the Reliability Standard requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered.~~

~~The Compliance Enforcement Authority shall complete the Preliminary Screen within five (5) business days after identifying or obtaining evidence of potential noncompliance with a Reliability Standard.~~

~~The Compliance Enforcement Authority shall maintain records of all Preliminary Screens.~~

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5.1 Notice of Possible Violation

If a Preliminary Screen conducted in accordance with Section 3.8 results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists. The Compliance Enforcement Authority shall issue a Notice of Possible Violation to the Registered Entity. The Notice of Possible Violation shall:

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

Upon issuing a Notice of Possible Violation, the Compliance Enforcement Authority enters the Possible Violation into the NERC compliance reporting and tracking system. NERC reports the Possible Violation to the NERC Board of Trustees Compliance Committee and submits a Notice of Possible Violation, on a confidential basis, to FERC and to other Applicable Governmental Authorities, as applicable. Any such notice to FERC or to other Applicable Governmental Authorities shall be provided in accordance with Section 8.0, Reporting and Disclosure.

5.25.2 Assessment of Possible Violation

After issuing a Notice of Possible Violation, the Compliance Enforcement Authority shall conduct an assessment of the facts and circumstances surrounding the Possible Violation to determine whether evidence exists to indicate the Registered Entity has violated the Reliability Standard requirement(s) identified in the Notice of Possible Violation, or whether the Possible Violation should be dismissed. The Compliance Enforcement Authority may consider any additional information to demonstrate that the Possible Violation should be dismissed or modified.

5.35.3 Notification to Registered Entity of Alleged Violation

If the Compliance Enforcement Authority determines, based on an assessment of the facts and circumstances surrounding a Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard, ~~and the Compliance Enforcement Authority and the Registered Entity have not entered into settlement negotiations pursuant to Section 5.6,~~ the Compliance Enforcement Authority shall notify the Registered Entity of the determination of the Alleged Violation, and shall notify NERC of the Alleged Violation, through issuance of issue a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification, (signed by an officer or designee of the Compliance Enforcement Authority) to the Registered Entity (CEO or equivalent and compliance contact) and shall enter the Alleged Violation into the NERC compliance reporting and tracking system. The notification ~~Notice~~ of Alleged Violation shall include ~~state~~, at a minimum:

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,

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- (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 or other mitigating activities to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.4, or
 - 2. agree with the Alleged Violation and agree to submit and implement a Mitigation Plan or other mitigating activities to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.4, or
 - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan 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 short-form procedure in Section 1.3.41.3.2, or (ii) the ~~full~~general 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~~notify FERC of the Alleged Violation and, if the Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, ~~to~~shall notify such other Applicable Governmental Authority of the Alleged Violation, 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~~

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~~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. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure.~~

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

5.45.4 Registered Entity Response

If the Registered Entity agrees with, does not contest, or does not respond to the Notice notification of Alleged Violation within thirty (30) days, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and penalty or sanction, ~~in which case and~~ the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation or similar notification to the Registered Entity and shall enter the Confirmed Violation into the NERC compliance reporting and tracking system. At the time of ~~notifying NERC issuing the Notice of the~~ Confirmed Violation ~~to the Registered Entity~~, the ~~Compliance Enforcement Authority Regional Entity~~ shall also provide notice to the Registered Entity that it may provide a written explanatory statement to accompany the filing with FERC and public posting ~~Notice of the~~ Confirmed Violation. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

If the Registered Entity contests the Alleged Violation or the proposed penalty or sanction, the Registered Entity shall submit to the Compliance Enforcement Authority, within thirty (30) days, 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. The Compliance Enforcement Authority and the Registered Entity may agree in writing to extend the forty (40) day period. If no hearing request is made prior to the end of the forty (40) day period, the violation will become a Confirmed Violation, ~~in which case the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation to the Registered Entity and to NERC.~~

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process in accordance with Attachment 2, Hearing Procedures ~~by convening a hearing body and~~

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~~issuing a written notice of hearing to the Registered Entity and the hearing body and identifying the Compliance Enforcement Authority's designated hearing representative.⁴⁰~~

5.55.5 Hearing Process for Compliance Hearings

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

5.65.6 Settlement Process

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

The Compliance Enforcement Authority may consider all relevant facts in settlement negotiations. A settlement agreement must ensure that the reliability of the Bulk Power System will not be compromised by the settlement and that a violation of a Reliability Standard will not occur as a result of the settlement. All settlement agreements must provide, if the settlement is approved, for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority and the Registered Entity will execute a settlement agreement~~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~~Compliance Enforcement Authority shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. The Registered Entity may submit an explanatory statement, conforming to the requirements of Section 5.4, to be included in the settlement agreement and which shall be subject to consent of the Compliance Enforcement Authority as part of the settlement agreement. The settlement agreement may state that the Registered Entity (i) admits the Alleged Violation, or (ii) does not contest the Alleged Violation, or (iii) neither admits nor denies the Alleged Violation, but may not state that the Registered Entity denies the Alleged Violation. Based on this review, NERC will either approve the settlement or reject the settlement and notify the ~~Compliance Enforcement Authority~~Regional Entity and the Registered Entity of any changes to

⁴⁰~~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.~~

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the settlement that would result in approval, and within five (5) business days the Compliance Enforcement Authority will in turn notify the Registered Entity. If NERC rejects the settlement, the ~~Regional Entity~~Compliance Enforcement Authority will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such report to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure, ~~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, with any Critical Energy Infrastructure Information and Confidential Information redacted. 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 Notices of Confirmed Violations are addressed in Section 8.0.

5.75.7 NERC Appeal Process

The Registered Entity or the Compliance Enforcement Authority may appeal the decision of a Regional Entity ~~hearing body's decision~~ to NERC, as provided for in NERC Rules of Procedure, Section 409.⁺⁺

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

⁺⁺~~This process generally completes within ninety (90) days of NERC's receipt of request for appeal.~~

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5.85.8 Approval of a Notice Notification of Confirmed Violation

A Notice or other notification of Confirmed Violation issued to a Registered Entity pursuant to Sections 5.4 or 5.7 shall include a detailed record of the enforcement action, including the facts and circumstances analyzed and the information on which the Compliance Enforcement Authority relied in proposing a penalty or sanction.

After ~~NERC receives~~receiving a ~~Notice~~notification of Confirmed Violation ~~through the NERC compliance reporting and tracking system from the Compliance Enforcement Authority~~, NERC shall review the ~~Notice~~notification of Confirmed Violation and utilize the information therein to prepare a Notice of Penalty. NERC shall advise the ~~Compliance Enforcement Authority~~Regional Entity of any additional detail or further development of the factual findings that NERC deems necessary before the Notice of Penalty can be issued.

NERC may direct the ~~Compliance Enforcement Authority~~Regional Entity to revise a penalty determination, in which case the Registered Entity subject to the penalty, or the ~~Compliance Enforcement Authority, as applicable~~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.

5.9 Notice of Penalty

If (i) the Registered Entity ~~accepts~~does not dispute the Notice of Alleged Violation and Proposed Penalty or Sanction or other notification of enforcement action from the Compliance Enforcement Authority and the proposed penalty or sanction, or (ii) a decision has been entered affirming an finding a ~~Alleged~~ Violation and all appeals have been concluded, or (iii) a settlement agreement has been reached addressing the Possible Violation or Alleged Violation(s), NERC shall ~~submit~~prepare a draft Notice of Penalty to the Applicable Governmental Authority and provide a copy to the ~~Regional Entity~~Compliance Enforcement Authority. The Regional Entity shall inform the Registered Entity that a Notice of Penalty is pending public filing, at least five (5) business days prior to the public filing and posting. NERC will file the Notice of Penalty with FERC and any other Applicable Governmental Authority, ~~as provided in the next paragraph~~, no sooner than five (5) business days after NERC approves the ~~Notice of~~ Confirmed Violation or settlement agreement.

NERC shall file the Notice of Penalty with FERC and, if the Possible Violation or Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such filing with FERC or with another Applicable Governmental Authority shall be made in accordance with Section 8.0, Reporting and Disclosure, 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

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~~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 Sections 5.4 or 5.75.6.

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

5.10 ~~Closure~~Completion of Enforcement Action

Following FERC approval of, or expiration of the period for action by FERC on, a Notice of Penalty filed by NERC, the Compliance Enforcement Authority shall issue a payment due notice and invoice to the Registered Entity. The payment due notice and invoice shall state the payment due date which shall be thirty (30) days from the date of the payment due notice and invoice. Upon payment of all monetary penalties by the Registered Entity, the Compliance Enforcement Authority shall issue a notice confirming payment to the Registered Entity, and provide a copy of the notice confirming payment to NERC. Following the completion by the Registered Entity of all requirements set forth in the Notice of Penalty and any settlement agreement, the Compliance Enforcement Authority shall issue the Registered Entity a Notice of Completion of Enforcement Action.

If the Compliance Enforcement Authority dismisses or disposes of a Possible Violation or Alleged Violation that does not become a Confirmed Violation, the Compliance Enforcement Authority shall issue a Notice of Completion of Enforcement Action to the Registered Entity.

~~A copy of the Notice of Completion of Enforcement Action shall also be provided to NERC by the Compliance Enforcement Authority.~~

The Notice of Completion of Enforcement Action shall include a release of any data retention directives that were previously issued to the Registered Entity in connection with the matter. Upon issuance of a Notice of Completion of Enforcement Action, tracking of the violation is completed, and the enforcement action shall be closed.

A copy of the Notice of Completion of Enforcement Action shall also be provided to NERC by the Compliance Enforcement Authority.

6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

~~The Compliance Enforcement Authority has authority to collect documents, data and information in the manner it deems most appropriate, including removing documents, data and information from the Registered Entity's location in accordance with appropriate security practices. If documents, data, information or other reports requested from a Registered Entity in connection with development of a Mitigation Plan or other mitigating activities are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in Attachment 1, Process for Non-submittal of Requested Data. If a Registered Entity believes that a request for documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC General Counsel.~~

~~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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~~requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC director of enforcement.~~

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. A Registered Entity may also submit a proposed Mitigation Plan at any other time, including with a Self-Report, or, without admitting it has committed a violation, in response to a Notice of Possible Violation or ~~Notice~~notification of Alleged Violation.

6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Possible, Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Possible, Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Possible, Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the cause of the Possible, Alleged or Confirmed Violation.
- The Registered Entity's action plan to prevent recurrence of the Possible, 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 Possible, 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.

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- 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 ~~accordance with its terms, 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, and should encompass actions necessary to prevent a recurring violation of the Reliability Standard requirements underlying the Possible, Alleged or Confirmed Violation(s). 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, but not limited to: (i) operational issues such as the inability to schedule an outage to complete mitigating activities, short assessment periods (i.e., event driven or monthly assessments), and (ii) construction requirements in the Mitigation Plan that require longer to complete than originally anticipated, 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

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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 ~~notification~~Notice of Alleged Violation, if the Registered Entity does not contest the Alleged Violation and penalty or sanction, or shall be reflected in a settlement agreement or Notice of Penalty. If the Registered Entity disputes the ~~Notice of~~ Alleged Violation or the penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the hearing body, unless the Registered Entity elects to appeal the hearing body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or penalty or sanction or in response to a Notice of Possible Violation; such submission shall not be deemed an admission of a violation or the appropriateness of a penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Regional Entity acting as Compliance Enforcement Authority 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.

6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans

Unless the time period is 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

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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.

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

If a Registered Entity submits a Mitigation Plan prior to issuance of a Notice of Notification of Confirmed Violation or entry into a settlement, such as with a Self-Report or in response to a Notice of Possible Violation, the Regional Entity may provisionally accept the proposed Mitigation Plan. If the Regional Entity subsequently determines, upon completing its assessment of the Possible Violation, that the facts and circumstances are different than those on which the accepted Mitigation Plan was based, the Regional Entity may, by notice to the Registered Entity and to NERC, require the Registered Entity to submit a revised Mitigation Plan that fully addresses the facts and circumstances of the violation. The Regional Entity's notice shall state the additional or different facts and circumstances that need to be addressed in the revised Mitigation Plan. The Registered Entity shall submit a revised Mitigation Plan in response to the notice within thirty (30) days following the date of the notice, unless the Regional Entity specifies or allows a longer time period. The Registered Entity's revised Mitigation Plan shall be subject to review and acceptance or rejection by the Regional Entity and by NERC in accordance with this Section 6.5. If the Regional Entity issues a Notice of Notification of Confirmed Violation or enters into a settlement with the Registered Entity and does not identify a need to request modifications to the provisionally-accepted Mitigation Plan based on additional or different facts and circumstances, the Regional Entity shall issue a notice to the Registered Entity, with a copy to NERC, stating that the "provisional" nature of the acceptance is terminated and the acceptance is final. The Regional Entity shall issue such notice within five (5) business days of issuance of the Notice of Confirmed Violation or entry into the settlement.

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the related Notice of Penalty in accordance with Section 8.0 or settlement in accordance with Section 5.6.

6.6 Completion/Confirmation of Implementation of Mitigation Plans

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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 Check~~ing~~, 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 requirement(s).~~

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-Report~~ing~~, Compliance Audit, Compliance Investigation, Complaint, etc.
- Date(s) of Notice of Possible Violation and ~~Notie~~notification of Alleged Violation (if applicable).
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.

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- 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 or current threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

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

Prior to issuing a Remedial Action Directive, the Regional Entity Compliance Enforcement Authority 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 Possible Violation(s) or Alleged Violation(s) 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) the requirements the Compliance Enforcement Authority is imposing to remove the imminent or current threat to the reliability of the Bulk Power System; (iv) a deadline for compliance and a schedule for specific weekly updates to the Compliance Enforcement Authority; (iv) a statement that the Registered Entity is in a state of noncompliance with the Reliability Standards listed in (i) until the requirements listed in the Remedial Action Directive are completed and certified completed by an officer of the Registered Entity; and (vi) 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 mail means to the Registered Entity's CEO or equivalent and copied to the Registered Entity's designated contact person for reliability matters and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The notice will be deemed received on the earlier of the actual date of receipt of the electronic submission or receipt of the express courier ~~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.

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The ~~Regional Entity~~Compliance Enforcement Authority will notify NERC within two (2) business days after issuing a Remedial Action Directive and will copy NERC on all correspondence sent to the Registered Entity.

Once the Compliance Enforcement Authority 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.

8.0 REPORTING AND DISCLOSURE

8.1 Information to be Reported

Regional Entities shall ~~promptly prepare and~~ submit to NERC ~~electronic all required~~ reports, containing current information concerning the information listed below. NERC will work with Regional Entities to specify form, content, timing, and method of submitting reports and notices.

- (1) The status of the review and assessment of Registered Entity compliance with Reliability Standards, ~~(2) all Possible Violations, Alleged Violations and Confirmed Violations of Reliability Standards by Registered Entities,~~ ~~(3) the status of Possible Violations and Alleged Violations,~~
- (2) The potential impact of any Alleged Violation or Confirmed Violation on the reliability of the Bulk Power System,
- (4) sSanctions and penalties,
- (5) Remedial Action Directives imposed, and
- (6) Mitigation Plan(s) accepted including dates for all required actions and for completion, and
- (7) The name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact.

8.2 Reporting to Applicable Governmental Authorities and Public Disclosure

~~Regional Entities shall report all Possible Violations, Alleged Violations and Confirmed Violations to NERC by promptly entering the Possible Violation, Alleged Violation or Confirmed Violation into the NERC compliance reporting and tracking system. Within two (2)~~

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business days of receiving a report from a Regional Entity of a Possible Violation, Alleged Violation or Confirmed Violation, NERC shall notify FERC of the Possible Violation, Alleged Violation or Confirmed Violation, and,

~~w~~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, NERC shall ~~also~~ notify such other Applicable Governmental Authority, within two (2) business days of receiving a report of a Possible Violation, Alleged Violation or Confirmed Violation from the Regional Entity; provided, that NERC will not disclose any non-public U.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~~ Likewise, 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.

~~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. Such reports shall include information regarding the nature of the Possible Violation, Alleged Violation or Confirmed Violation, the name of the Registered Entity involved, the status of any ongoing review and assessment of the Possible Violation, Alleged Violation, or Confirmed Violation, the name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact, as required by 18 C.F.R. §39.7(b), and, in the case of an Alleged Violation or Confirmed Violation, its potential impact on the reliability of the Bulk Power System.~~

~~Regional Entities shall report to NERC, through the NERC compliance reporting and tracking system, the status of Possible Violations and Alleged Violations, regardless of significance, that have not yet resulted in a Notice of Confirmed Violation or have not completed the hearing process, or for which mitigation activities (including activities being carried out pursuant to a settlement agreement) have not been completed. Regional Entities will ensure the information is current when these reports are provided.~~

~~Regional Entities shall report a Confirmed Violation to NERC at the same time the Notice of Confirmed Violation is issued to the Registered Entity. NERC will publicly post on its Web site each Notice of Penalty, with any Critical Energy Infrastructure Information or other Confidential Information redacted, with the identify of the violator, together with any statement submitted by the Registered Entity, when NERC files the Notice of Penalty with FERC pursuant to Section 5.9.~~

Compliance Monitoring and Enforcement Program

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Possible, Alleged and Confirmed Violations for which mitigation activities have not been completed. ~~All such reports to FERC and to other Applicable Governmental Authorities shall be provided in accordance with this Section.; 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.~~

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 Checksing, Compliance Investigations, Self-Reportsing, 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 “**e**Confidential **i**Information,” “**e**Confidential **b**Business and **m**Market **i**Information,” “**e**Critical **e**Energy **i**Infrastructure **i**Information,” and “**e**Critical **i**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 subject matter experts) 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 **e**Confidential **i**Information.

9.3.3 Critical Energy Infrastructure Information

The Compliance Enforcement Authority will keep confidential all **e**Critical **e**Energy **i**Infrastructure **i**Information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be **C**eritical **e**Energy **i**Infrastructure **i**Information shall be redacted, in accordance with Section 1500 of the NERC Rules of Procedure, 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 for reliability matters, with a copy to the Registered Entity's CEO or equivalent.

Step 2: The Compliance Enforcement Authority ~~will~~ issues 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~~) informing the Registered Entity that if the information is not received within ten (10) business days, the Compliance Enforcement Authority may (1) implement a compliance monitoring process, (2) apply a Reliability Standard violation at the severe violation severity level, and/or (3) assess a fine against the Registered Entity in accordance with Section 414 of the NERC Rules of Procedure.

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). If the Registered Entity fails to produce the requested information in response to the notification in Step 2 within the ten (10) business days cure period set forth in the notification, the Compliance Enforcement Authority may take any action of which the Registered Action was notified in Step 2.~~

~~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.~~

Compliance Monitoring and Enforcement Program

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

ATTACHMENT 2 - HEARING PROCEDURES

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ATTACHMENT 2 - HEARING PROCEDURES

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

- (a) The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into:
- (#1) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and
 - (#2) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties and/or sanctions in accordance with the NERC *Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).
- (b) Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Officer and a ~~[HEARING BODY]~~Hearing Body established by the Compliance Enforcement Authority. The composition of the ~~[HEARING BODY]~~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]~~Hearing Body on any matter brought before it for decision.
- (c) The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.
- (d) If a final order has been entered by the Hearing Body, or the Hearing Body has issued a ruling determining that there are no issues to be decided regarding the Alleged Violation, proposed Penalty amount, proposed Mitigation Plan or proposed Remedial Action Directive, or the Registered Entity and the Compliance Enforcement Authority have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the Hearing Body and no further proceedings shall be conducted before the Hearing Body.

1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, ~~as defined in Paragraph 1.1.5~~, or the ~~[HEARING BODY]~~Hearing Body, for good cause shown, either upon the Hearing Officer’s or the ~~[HEARING BODY]~~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.
- (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~~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~~Section 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- (b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- (c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

1.1.5 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:

“Clerk,” shall mean the personas designated by the Compliance Enforcement Authority to perform administrative tasks relating to the conduct of hearings as described in these Hearing Procedures.

“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.

“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 or other individual designated by 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.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means the body established or designated by the Compliance Enforcement Authority to conduct hearings and issue final orders concerning disputed compliance matters in accordance with these Hearing Procedures.

“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 the Hearing Body or 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 *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.

“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]~~Hearing Body.

“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with ~~[HEARING BODY]~~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 ~~evidencedocuments~~; 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 the Compliance Enforcement Authority located at its principal office. The office will be open during the Compliance Enforcement Authority's regular business hours ~~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]~~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 5:00 P.M. ~~[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]~~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]~~Hearing Officer. 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 ~~compliance contact~~~~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

Subject to the provisions of Section 1.5.10, Any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

(c) By the Clerk

The Clerk shall serve all issuances of the Hearing Officer and ~~[HEARING BODY]~~Hearing Body upon the members of the ~~[HEARING BODY]~~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 Compliance Enforcement Authority transmits to the ERO ~~with~~either (1) a Notice of Penalty, or (2) a ~~[HEARING BODY]~~Hearing Body final order that includes a Notice of Penalty.

(d) Effective Date of Service

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

1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the office of the Compliance Enforcement Authority 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}~~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}~~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}~~Hearing Body upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

1.2.8 Transcripts

- (a) A full and complete record of all hearings, including any oral argument, shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer may allow off-the-record discussion of any matter provided the Hearing Officer states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. The court reporter shall file a copy of each transcript with the Clerk. Upon receipt of a transcript from the court reporter, the Clerk shall send notice to the Participants stating that a transcript has been filed by the court reporter, the date or dates of the hearing that the transcript records, and the date the transcript was filed with the Clerk.
- (b) Unless otherwise prescribed by the Hearing Officer, a Participant may file and serve suggested corrections to any portion of ~~the~~ transcript within ~~fourteen (14)~~thirty-five (35) days from the date of the Clerk's notice that the transcript has been filed with the Clerk 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~~statements being transcribed and ensure the accuracy of the record.
- (c) 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 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]~~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]~~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]~~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]~~Hearing Body, except ~~as that witnesses shall personally appear at the evidentiary hearing if~~ required by ParagraphSection 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~~

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

(b) The Hearing Body may allow a Person to intervene only if the Hearing Body determines that the Person seeking intervention has a direct and substantial interest in the outcome of the Alleged Violation, proposed penalty or sanction, Mitigation Plan, or Remedial Action Directive that is the subject of the proceeding. Examples of a direct and substantial interest in the outcome shall include

- (1) that the Person seeking intervention has received a Notice of Alleged Violation or a Remedial Action Directive involving the same Reliability Standard requirement(s) and arising out of the same event or occurrence as the existing Respondent(s) that is the subject of the proceeding, or
- (2) that the Person seeking intervention will or may be contractually or legally liable to the original Respondent(s) for payment of all or a portion of the proposed penalty or sanction that is the subject of the proceeding, provided, that after the Person seeking intervention sufficiently demonstrates it will or may be contractually or legally liable for payment of all or a portion of the proposed penalty or sanction to be granted intervention, the Person granted intervention and the existing Respondents will not be allowed to litigate in the proceeding whether the Person granted intervention is contractually or legally liable for payment of all or a portion of the proposed penalty or sanction or the amount of the proposed Penalty or Sanction for which the Person granted intervention is or may be liable.

That the Person seeking intervention has received a Notice of Alleged Violation for the same Reliability Standard requirement(s) as the original Respondent(s) but arising out of a different event or occurrence; or seeks to intervene to advocate an interpretation of the Reliability Standard requirement(s) or provision(s) of the *Sanction Guidelines*, that are at issue in the proceeding, without more, shall not constitute a direct and substantial interest in the outcome and shall not be grounds on which the Hearing Body may allow the Person to intervene.

(c) A Person allowed to intervene and become a Participant to a proceeding shall be designated as a Respondent and deemed to be aligned with the existing Respondent(s), unless the Hearing Body, in its order granting intervention, states that the Person allowed to intervene shall be deemed to be aligned with another Participant to the proceeding.

1.2.13 Proceedings Closed to the Public

No hearing, oral argument or meeting of the ~~[HEARING BODY]~~Hearing Body shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or ~~[HEARING BODY]~~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) determines that public release is appropriate. Only the members of the ~~[HEARING BODY]~~Hearing Body, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the filing of a request for a hearing~~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 by the letters “[RE]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

1.2.15 Representations Deemed to be Made in All Pleadings

A Participant presenting any pleading to the Hearing Officer or Hearing Body shall be deemed to certify that to the best of the Participant’s knowledge, information and belief, formed after and based on an inquiry that is reasonable under the circumstances:

- (a) the factual allegations set forth in the pleading have or will have support in the evidence or the Participant believes they will have support in the evidence after reasonable opportunity for further investigation or discovery;
- (b) the denials in the pleading of factual allegations made by another Participant are warranted by or will be warranted by the evidence or, if specifically so identified, are reasonably based on belief or on a lack of information;

- (c) the claims, defenses and other contentions set forth in the pleading are warranted based on the applicable Reliability Standard requirement(s) or Rules of Procedure provisions; and
- (d) the pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the hearing or the cost incurred by any Participant.

1.2.16 Increase to Penalty Based on Frivolous or Dilatory Actions

If the Hearing Body finds, in its final order, that the Respondent has filed frivolous or unsupported pleadings, made frivolous or unsupported arguments, engaged in tactics intended to delay the proceeding or to increase the cost of the proceedings for any other Participant, or been dilatory or unresponsive in responding to discovery requests, the Hearing Body may determine in the final order that the proposed Penalty imposed on the Respondent should be increased on account of the Respondent's conduct. The Hearing Body's final order shall specifically describe the Respondent's conduct on which the increase in the Penalty is based. Any such increase in the Penalty shall be confirmed by NERC in accordance with Sections 5.8 and 5.9 of the Compliance Program.

1.2.1517 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]~~Hearing Body members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This "hold harmless" provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

1.3 Initiation of the Hearing Process

1.3.1 Registered Entity's Option to Request a Hearing

(a) Except when contesting a Remedial Action Directive pursuant to ~~s~~Section 1.9 of these Hearing Procedures, a Registered Entity may file a statement, in accordance with Section 1.3.1(e), with the Compliance Enforcement Authority requesting a hearing if either:

- (1a) The Registered Entity files a response to a Notice of Alleged Violation that contests either the Alleged Violation, the proposed Penalty, or both; or
- (2b) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity's proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity's initial proposed Mitigation Plan.

(b) A Registered Entity must file its hearing request within forty (40) days after

~~(1)~~ ___the Registered Entity files its response to the Notice of Alleged Violation; or

~~(2)~~ ___the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity’s proposed Mitigation Plan, whichever is applicable.

~~(c)~~ ___ If the Registered Entity does not file a hearing request within the time period set forth in this ~~Paragraph~~Section, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Compliance Staff’s rejection of the revised Mitigation Plan, whichever is applicable.

~~(d)~~ ___ In accordance with Section 5.3 of the Compliance Program, 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 ~~Section 1.3.4~~Paragraph 1.3.2 or the ~~general~~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 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.~~

~~(e)~~ ___ The Registered Entity’s statement requesting a hearing shall:

~~(1)~~ ___ contain a plain and concise statement of the facts and arguments supporting the Registered Entity’s position, as applicable, that it did not violate the Reliability Standard requirement(s) set forth in the Notice of Alleged Violation, that the proposed penalty or sanction is too high and should be reduced, or that the Registered Entity’s proposed Mitigation Plan should be approved;

~~(2)~~ ___ state the relief that the Registered Entity requests the Hearing Body to grant; and

~~(3)~~ ___ state whether the Registered Entity requests the shortened hearing procedure or the general hearing procedure.

The Registered Entity’s statement may set forth two or more alternative grounds on which the Registered Entity bases its position, as applicable, that it did not violate the Reliability Standard requirement(s) set forth in the Notice of Alleged Violation, that the proposed penalty or sanction

is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan should be approved.

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

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

(1a) The Registered Entity's Self-Reporting of a violation;

(2b) The Notice of Alleged Violation and the Registered Entity's response thereto; and/or

(e3) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

1.3.2 Compliance Staff's Response to Request for Hearing

(a) If the Registered Entity's request for hearing requests that the shortened hearing procedure be used, the Compliance Staff shall file a response stating whether it agrees to the use of the shortened hearing procedure.

(b) If the Registered Entity's request for hearing requests that the Registered Entity's proposed revised Mitigation Plan should be approved, the Compliance Staff shall file a response stating the Compliance Staff's position as to why the Registered Entity's proposed revised Mitigation Plan should not be approved and setting forth any additional terms that the Compliance Staff believes should be included in the Mitigation Plan.

(c) If the Registered Entity's request for hearing does not request that the shortened hearing procedure be used and does not request that the Registered Entity's proposed revised Mitigation Plan should be approved, the Compliance Staff may, but is not required to, file a response stating, as applicable, the basis for the Compliance Staff's position that the Registered Entity violated the Reliability Standard requirement(s) specified in the Notice of Alleged Violation or that the proposed penalty or sanction is appropriate under the *Sanction Guidelines* and should not be reduced.

(d) Any response by the Compliance Staff required or permitted by this Section shall be filed within fifteen (15) days after the date the request for hearing was filed, unless the Hearing Officer or Hearing Body allows a longer time to file the response.

1.3.3 Notice of Hearing

(a) The Clerk shall issue a notice of hearing not less than sixteen (16) days, and not more than twenty-one (21) days, after the Registered Entity files its request for hearing.

(b) The notice of hearing shall state whether the shortened hearing procedure or the general hearing procedure will be used.

(c) The notice of hearing shall identify the Hearing Officer and the date, time and place for the initial prehearing conference.

(1) If the shortened hearing procedure is to be used, the initial prehearing conference shall be set for a date within seven (7) days following the date of the notice of hearing.

(2) If the general hearing procedure is to be used, the initial prehearing conference shall be set for a date within fourteen (14) days following the date of the notice of hearing.

1.3.24 Shortened Hearing Procedure

The shortened hearing procedure shall be as set forth in this ~~Paragraph~~Section. The rules applicable to the ~~general~~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 ~~Section~~Paragraph or otherwise renders it inapplicable to the shortened hearing procedure. The rules concerning ex parte communications in ~~Section~~Paragraph 1.4.7 are hereby expressly made applicable to the shortened hearing procedure under this ~~Section~~Paragraph.

The ~~[HEARING BODY]~~Hearing Body ~~shall~~may utilize a Hearing Officer to preside over the shortened hearing procedure in accordance with ~~Section~~Paragraph 1.4.2. But, no ~~Testimonial~~evidentiary ~~h~~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~~subsection (g). Instead, the following events shall take place within the following periods:

(a) The initial prehearing conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in ParagraphSection 1.5.2 that may apply, the initial prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphssubsections (c) through (e).

(b) Within ~~five (5)~~ten (10) days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to SectionParagraph 1.5.7.

- (c) Within twenty-one (21) days after the initial prehearing conference, the Staff shall file:
 - (1) initial comments stating Staff’s position on all issues and the rationale in support of its position, including all factual and legal argument;
 - (2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - (3) a verification attesting to the truthfulness of the facts alleged in the filing.
- (d) Within fourteen (14) days of Staff’s initial comment filing pursuant to Subparagraphsubsection (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 Subparagraphsubsection (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 Subparagraphsubsection (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 SectionParagraph 1.7.5 and within seven (7) days thereafter, a reply brief designated “Brief in Reply to Exceptions.”
- (h) The ~~[HEARING BODY]~~Hearing Body shall strive, but is not required, to issue a final order within ~~ninety (90)~~one hundred twenty (120) days of the notice of hearing.

The Hearing Officer or ~~[HEARING BODY]~~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]~~Hearing Body to issue the final order within ~~ninety (90)~~one hundred twenty (120) days of the notice of hearing.

1.4 General Hearing Procedure

1.4.1 ~~Notice of Hearing~~[Intentionally Left Blank]

~~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. [Blank.]~~

1.4.2 Hearing Officer

(a) The Compliance Enforcement Authority ~~may~~shall 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]~~Hearing Body as set forth in ~~Paragraph~~Section 1.4.3. Members of the ~~[HEARING BODY]~~Hearing Body may attend any aspect of the hearing.

(b) The ~~[HEARING BODY]~~ may ~~delegate to the~~ Hearing Officer ~~is responsible for~~authority over the conduct of the hearing, including administering the hearing from the initial prehearing conference through the issuance of the Hearing Officer's initial opinion, ~~and~~ any administrative hearing functions thereafter, and ~~the responsibility for~~ submission of the matter to the ~~[HEARING BODY]~~Hearing Body for final decision through the presentation to the ~~[HEARING BODY]~~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 ~~E~~evidentiary ~~h~~Hearings;
- (7) To hear argument on all objections, motions and other requests, and to rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- (8) To rule on and receive evidence;
- (9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- (10) To issue protective orders pursuant to ~~Section~~~~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.

~~(c) If the [HEARING BODY] uses a Hearing Officer to preside over a hearing, the [HEARING BODY]The Compliance Enforcement Authority 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 SectionParagraph 1.4.5.~~

1.4.3 ~~[HEARING BODY]~~Hearing Body

~~(a) 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 of the Hearing Body on any matter brought before it for decision.~~

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

- (1) ~~Upon receiving a filing by a Participant, Tthe Clerk shall promptly send a notice to the members of the [HEARING BODY]Hearing Body identifying the date of the filing and the Participant making the filing and briefly describing the nature of the filing. Any member of the Hearing Body may request of, and shall receive from, the Clerk, a copy of any filing by a Participant. 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 ParagraphSection 1.6.7.~~
- (2) The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Body.

- (23) The ~~{HEARING BODY}~~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. However, the members of the Hearing Body shall attend all Testimonial Hearings. At any prehearing conference or hearing attended by a member of the Hearing Body, the member of the Hearing Body may ask questions directly of any Participant or witness.
- (43) The ~~{HEARING BODY}~~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}~~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.
- (54) To the extent that the ~~{HEARING BODY}~~Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 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.
- (65) The ~~{HEARING BODY}~~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}~~Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

1.4.4 Interlocutory Review

(a) A Participant shall be allowed to seek interlocutory review by the ~~{HEARING BODY}~~Hearing Body of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling.

(b) Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the ~~{HEARING BODY}~~Hearing Body, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by references to the record, or by affidavit if based on facts that do not appear ~~of~~in the record.

Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses ~~are~~shall be allowed.

(c) The Hearing Officer shall file a report to the ~~[HEARING BODY]~~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]~~Hearing Body.

(d) On review of a Hearing Officer's ruling, the ~~[HEARING BODY]~~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]~~Hearing Body may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments.

(e) Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in ~~Section~~Paragraph 1.7.8) of the ~~[HEARING BODY]~~Hearing Body, and (ii) majority vote of the members of the ~~[HEARING BODY]~~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]~~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]~~Hearing Body based on a finding of exceptional circumstances.

(f) A non-Participant that has been ordered by the Hearing Officer pursuant to ~~Section~~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]~~Hearing Body of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to ~~Section~~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) A Hearing Officer, Technical Advisor or member of the ~~[HEARING BODY]~~Hearing Body shall recuse himself or herself from a proceeding if participation would violate the Compliance Enforcement Authority's applicable conflict of interest policy.

(b) Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the ~~[HEARING BODY]~~Hearing Body from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by ~~s~~Section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by

affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

(c) The Hearing Officer shall issue a proposed ruling for the ~~[HEARING BODY]~~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]~~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 refused~~recuses himself or herself or ~~is~~ is disqualified, the ~~[HEARING BODY]~~Hearing Body will appoint a replacement Hearing Officer. To ensure fairness to the Participants and expedite completion of the proceeding when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer may recall any witness or may ~~take other steps necessary to ensure~~certify familiarity with any part or all of the record.

(d) If a quorum (as defined in ~~Section~~Paragraph 1.7.8) of the ~~[HEARING BODY]~~Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the Compliance Enforcement Authority shall ~~at least the number of~~appoint a new member(s) to the ~~[HEARING BODY]~~Hearing Body ~~necessary~~ to create a quorum, ~~which~~The new member(s) shall serve on the ~~[HEARING BODY]~~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]~~Hearing Body shall be subject to the provisions applicable herein to all ~~[HEARING BODY]~~Hearing Body members.

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

(a) Once a Registered Entity requests a hearing pursuant to ~~Paragraph~~Section 1.3.1:

- (1) neither the ~~[HEARING BODY]~~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]~~Hearing Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
 - (A) in writing if the writing is simultaneously provided to all Participants; or
 - (B) orally if a representative for every Participant is present in person or by telephone;
 - (C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.

(b) Exceptions

- (1) The proscription in Subparagraph subsection (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- e(2) The proscription in Subparagraph subsection (a)(1) ~~also~~ does not prohibit communications between or among members of the ~~[HEARING BODY]~~Hearing Body, the Hearing Officer and any Technical Advisor.
- (3) The proscription in subsection (a)(1) does not prohibit communications between the Hearing Officer or members of the Hearing Body to the Clerk for the purpose of transmitting documents, giving instructions to the Clerk, or discussing scheduling and other procedural matters relating to the proceeding.
- (4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Body and representatives of the Compliance Enforcement Authority for purposes of establishing the hearing forum.
- (dc) Any member of the ~~[HEARING BODY]~~Hearing Body, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly ~~allow causes to be made~~ a communication prohibited by this Section 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

(a) Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

(c) Any attorney appearing on behalf of a Participant shall be licensed to practice law and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia. All representatives appearing before the Hearing Body or Hearing Officer shall conform to the standards of ethical conduct required of practitioners before the courts of the United States.

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

1.4.9 Failure to Appear or Exercise Diligence

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

1.4.10 Consolidation of Proceedings

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

(b) A Participant may file a motion ~~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 ~~occurrence transaction~~. Such consolidation may be allowed in the discretion of the Hearing Officer or ~~[HEARING BODY]~~Hearing Body, as applicable.

1.5 Prehearing Procedure

1.5.1 [Intentionally left blank]

1.5.2 Prehearing Conferences

~~(a) The Hearing Officer shall hold at least one. The purpose of the~~ prehearing conference, which may be the initial prehearing conference or a subsequently schedule prehearing conference, for the following purposes ~~shall be to:~~

- ~~(1)~~ Preliminarily identify the issues and discuss the anticipated format of the hearing;
- ~~(2)~~ Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
- ~~(3)~~ Explore the possibility of obtaining admissions of fact and of the authenticity genuineness of documents that would avoid unnecessary proof;
- ~~(4)~~ Develop a schedule for the preparation and submission of evidence and witness testimony, including the disclosures of witnesses and exhibits and whether the use of pre-filed testimony may not be appropriate, in advance of the Eevidentiary ~~H~~Hearing;
- ~~(5)~~ Develop a schedule or schedules for any anticipated motions
- ~~(6)~~ Schedule a date(s) for the Eevidentiary Hearing, which shall be within ninety (90) days of the prehearing conference described in this subsection, unless a different date or dates is specified by the Hearing Officer or the Hearing Body with the consent of all Participants or for good cause shown; and
- ~~(7)~~ Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

~~(b) The Hearing Officer shall also hold a final prehearing conference prior to the Evidentiary Hearing, for the purpose of discussing:~~

- ~~(1)~~ the anticipated duration of the hearing;
- ~~(2)~~ the scheduling of witnesses' appearances to testify;
- ~~(3)~~ the issues anticipated to be presented at the hearing;
- ~~(4)~~ whether prehearing memoranda should be filed and if so, the schedule; and
- ~~(5)~~ any other matters identified by the Hearing Officer for the management of the Evidentiary Hearing.

Participants may submit to the Hearing Officer, at least ten (10) days prior to the scheduled date of the final prehearing conference, a proposed list or lists of matters to be discussed at the final prehearing conference.

1.5.3 Summary Disposition

(a) Availability

~~A Hearing Officer, on the Hearing Officer's own motion or on the motion of a Participant, may issue an initial opinion granting, in whole or in part, summary disposition if it appears that there are no issues of material fact and a Participant is entitled to issuance of a final order in its favor. 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.~~

(b) Motion for Summary Disposition and Responses

- (1) A Participant moving for summary disposition must clearly identify the material facts that are not in dispute, demonstrate that there are no other material facts in dispute, and demonstrate that on the basis of the undisputed material facts, the Participant is entitled to issuance of a final order in its favor.
- (2) A Participant opposing a motion for summary disposition must clearly identify in its response to the motion the material facts that the Participant contends remain in dispute, and/or explain why the moving Participant is not entitled to issuance of a final order in its favor even though there are no disputed issues of material fact.

(c) Summary Disposition on the Hearing Officer's Own Motion

~~If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an Evidentiary Hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs.~~

(d) Hearing Officer's Initial Opinion Granting Summary Disposition

When the Hearing Officer issues an initial opinion granting ~~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]~~Hearing Body.

1.5.4 Status Hearings

Any Participant may request, and the Hearing Officer may call, a status hearing at any time subsequent to the initial prehearing conference to address issues that have arisen between the Participants or other matters relevant to the conduct of the hearing. Such issues may include, but are not limited to, discovery disputes and scheduling matters. A Participant requesting a status hearing to resolve a dispute shall include in its request a certification that it has made a good faith effort to resolve the dispute with the other Participant(s) before requesting the status hearing. The Hearing Officer shall direct the Clerk to issue a notice of status hearing that sets forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.

1.5.5 Motions and Responses

(a) Unless otherwise provided in these Hearing Procedures or by the procedural schedule established by the Hearing Officer or Hearing Body, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless at the Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit.

(b) Unless otherwise specified by the Hearing Officer or Hearing Body, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; however, a Hearing Officer or Hearing Body may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer or Hearing Body, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

1.5.6 Experts

(a) A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited.

(b) The Participant employing the expert shall propose the agreement for approval ~~by~~ 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 twenty-five (25) days after the date the issuance of the notice of request for hearing is filed, Staff shall make available for inspection and copying by the Respondent/other Participants, 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 grounds on bases pursuant to which Staff is shall be authorized to withhold Documents from inspection and copying are shall be the bases set forth in subsection 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 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/Participant if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives Documents pursuant to a request for information after Staff has made Documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph subsection (a)(1), the additional Documents shall be made available to the Respondent/Participants not later than fourteen (14) days after

Staff receives such Documents. If a date for the ~~e~~Evidentiary ~~h~~Hearing has been scheduled, Staff shall make the additional Documents available to the ~~Respondent~~other Participants not less than ten (10) days before the Evidentiary ~~h~~Hearing. If Staff receives such Documents ten or fewer days before the Evidentiary ~~h~~Hearing is scheduled to begin or after the Evidentiary ~~h~~Hearing begins, Staff shall make the additional Documents available immediately to the ~~Respondent~~other Participants.

- (4) ___ Nothing in sub~~section~~paragraph (a)(1) shall limit the discretion of the Compliance Enforcement Authority to make any other Document available to the ~~Respondent~~Participants or the authority of the Hearing Officer to order the production of any other Documents or information by any Participant.

(b) ___ Documents That May Be Withheld by Staff

- (1) ___ Staff may withhold a Document from inspection and copying by ~~the Respondent~~a Participant if:
- (A) ___ the Document is privileged to ~~the Compliance Enforcement Authority~~Staff or constitutes attorney work product of ~~Staff's~~ counsel for the Compliance Enforcement Authority (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent or other Participant);
 - (B) ___ the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that ~~shall will~~ not be offered in evidence or otherwise relied on by Staff in the Hearing;
 - (C) ___ the Document would disclose
 - ~~(i)~~ ___ ~~(i)~~ an examination, investigatory or enforcement technique or guideline not otherwise made public 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.

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

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

(c) ___ Withheld Document List

–At the time it is required to make Documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which Documents are being made available, a list of Documents withheld by Staff pursuant to Subparagraph subsection (b)(1), with a statement of the grounds that support withholding the Document. Upon review, for good cause shown, the Hearing Officer may order Staff to make any Document withheld, other than a Document that is subject to the attorney-client privilege, available to the Respondent(s) other Participants for inspection and copying.

(d) ___ Timing of Inspection and Copying

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

(e) ___ Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Paragraph Section shall be made available to the Respondent and other Participants 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 Participant shall be given access to the Documents at the Compliance Enforcement Authority's offices during normal business hours. A Respondent Participant shall not be given custody of the Documents or be permitted to remove the Documents from the Compliance Enforcement Authority's offices, other than copies of Documents made available by the Compliance Enforcement Authority for that purpose.

(f) ___ Copying Costs

A ~~Respondent~~Participant may obtain a photocopy of all Documents made available for inspection. A ~~Respondent~~Participant shall be responsible for the cost of photocopying. Unless otherwise ordered by the Hearing Officer, charges for copies made at the request of a ~~Participant~~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 ~~Participant~~Respondent pursuant to this ~~Section~~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. The Hearing Officer, or, upon review, the ~~[HEARING BODY]~~Hearing Body shall determine whether the failure to make the Document available was harmless error.

1.5.8 Other Discovery Procedures

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

(b) Unless otherwise directed by the Hearing Officer or ~~[HEARING BODY]~~Hearing Body upon motion by a Participant, or by the Hearing Officer, or by the ~~[HEARING BODY]~~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)~~**(1)** The provisions of ~~Subparagraphs~~subsections (d), (e) and (f) of ParagraphSection 1.5.7 shall apply to any such discovery.

~~(b)~~**(2)** Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(~~bd~~)(2)) shall not be applicable.

~~(e)~~**(3)** The Hearing Officer and the ~~[HEARING BODY]~~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]~~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)~~(4) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide Documents, information or testimony.

~~(e)~~5) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows:

(i) ___ the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the ~~[HEARING BODY]~~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]~~Hearing Body.

~~(f)~~6) Unless otherwise ordered by the Hearing Officer or ~~[HEARING BODY]~~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)~~7) A list of withheld Documents, if any, shall be provided by any Participant required to produce Documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the Documents. Upon review, for good cause shown, the Hearing Officer may order the Participant to make any Document withheld available to any other Participant or Participants for inspection and copying.

~~(h)~~8) In the event a Document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the Document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a Document or information, the burden shall be on the Participant that failed to produce or provide the Document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the ~~[HEARING BODY]~~Hearing Body shall determine whether the failure to make the Document available was harmless error.

(9) Unless otherwise ordered by the Hearing Officer or ~~[HEARING BODY]~~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 request for hearing was filed~~initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.

(10) Notwithstanding ~~(b)(6)~~ and ~~(b)(9)~~, however, if the shortened hearing procedure in ~~Section 1.3.4~~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.

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

(1) full disclosure of all relevant Documents and information;

(2) the exercise of due diligence in the conduct of discovery by a Participant; and

(3) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

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

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

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

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

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

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

(f) The Participants shall file the Documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of written testimony and other evidence in advance of the eEvidentiary hHearing 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 eEvidentiary hHearing.

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

1.5.10 Protective Orders

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

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

(#1) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive;

(#2) 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 subsection 1.5.10(b) shall require Staff to produce any Documents it is entitled to withhold under Subparagraph subsection 1.5.7(b).

(c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, Documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.

(d) A Document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that Document or statement and a ruling on such a motion by the Hearing Officer.

(e) The protective order shall identify the data, Documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.

(f) A public redacted version of each Document and transcript that contains information that is protected pursuant to this ParagraphSection must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.

(g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view or hear the proprietary information in accordance with the protective order.

1.5.11 Pre-Evidentiary Hearing Memorandum

(a) The Hearing Officer or the ~~[HEARING BODY]~~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 ~~e~~Evidentiary ~~h~~Hearing that ~~set forth~~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, and such other matters as may be directed by the Hearing Officer or the Hearing Body.

(b) The purpose of such memoranda will be to aid the Hearing Officer and ~~[HEARING BODY]~~Hearing Body in preparation for the ~~e~~Evidentiary ~~h~~Hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-~~e~~Evidentiary ~~h~~Hearing memorandum.

(c) The Hearing Officer may establish pageword limitations on such submissions.

1.5.12 Certification of Questions to the NERC Board of Trustees

(a) Should a hearing present a significant question of policy or of interpretation or application of one or more Reliability Standard requirements, the resolution of which may be determinative of the issues in the proceeding in whole or in part, the Hearing Officer, on his or her own motion or on motion of a Participant, may recommend to the Hearing Body that it certify the question to the NERC Board of Trustees for determination pursuant to Section 412 of the NERC Rules of Procedure.

(b) If the Hearing Officer, on his or her own motion, wishes to present a question to the Hearing Body for certification to the NERC Board of Trustees, the Hearing Officer shall first provide the Participants the opportunity to submit memoranda addressing whether the question should be certified and the precise terms of the question to be certified.

(c) If a Participant files a motion requesting, or the Hearing Officer determines on his or her own motion, that a question should be certified to the NERC Board of Trustees, the Hearing Officer shall submit a written recommendation on the matter to the Hearing Body. If the request for certification is based on the motion of a Participant, the Hearing Officer shall also submit to the Hearing Body the motion and any answers to the motion that were filed. If the request for certification is on the Hearing Officer's own motion, the Hearing Officer shall also submit to the Hearing Body the Participants' memoranda that were filed pursuant to subsection (b).

(d) As a matter of policy, questions of fact presented by the particular matter in dispute in a hearing should seldom, if ever, be the subject of a certification to the NERC Board of Trustees.

(e) The Hearing Body shall determine whether the proposed question shall be certified to the NERC Board of Trustees for determination. If the Hearing Body determines that the proposed question should be certified to the NERC Board of Trustees, the Hearing Body shall also determine whether the hearing should be suspended, in whole or in part, while the question is pending before the NERC Board of Trustees for determination.

(f) As provided in NERC Rule of Procedure Section 412, the NERC Board of Trustees may decide to reject a proposed certification from a Hearing Body.

(f) If the NERC Board of Trustees accepts certification of a question and issues a determination on the question, the hearing shall proceed following the determination in accordance with the NERC Board of Trustees' decision.

1.6 Procedure at Evidentiary Hearing ~~Procedure~~

1.6.1 Purpose of Evidentiary Hearings

The purpose of the ~~e~~Evidentiary ~~H~~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 ~~e~~Evidentiary ~~H~~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 ~~e~~Evidentiary ~~H~~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]~~Hearing Body. Any Participant's request for such statements, or a Hearing Officer or ~~[HEARING BODY]~~Hearing Body notice requiring such statements, shall be made at least ten (10) days in advance of the start of the ~~e~~Evidentiary ~~H~~Hearing.

1.6.4 Right of Participant to Present Evidence

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

1.6.5 Exhibits

(a) All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide Documents, information or testimony, shall be offered in the form of an exhibit.

(b) Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the ~~e~~Evidentiary ~~H~~Hearing to the Participants and the Hearing Officer.

1.6.6 Witness Attendance at ~~Testimonial~~Evidentiary Hearing

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

(b) A person compelled to appear, voluntarily testifying, or making a statement may be accompanied, represented and advised by an attorney.

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

1.6.7 Admission of Evidence

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

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

(c) Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in ~~ParagraphSection~~ 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence.

(d) The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the ~~[HEARING BODY]~~Hearing Body, in accordance with ~~SectionParagraph~~ 1.6.14, and then for redirect examination in accordance with ~~SectionParagraph~~ 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

(e) Except (i) in exceptional cases and upon a showing of good cause, and (ii) witnesses testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify ~~during the evidentiary hearing~~ unless a Participant has served the witness' written testimony in advance of the ~~evidentiary Testimonial H~~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 Testimonial H~~hearing when a Participant has not served the witness' written testimony in advance of the ~~Testimonial evidentiary H~~hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

(a) When relevant and material matter offered in evidence is embraced in a book, paper or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.

(b) If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit.

(c) All other Participants shall be afforded an opportunity to examine the book, paper or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

1.6.9 Stipulations

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

1.6.10 Official Notice

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

- (1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
- (2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the Compliance Enforcement Authority.
- (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.

(b) All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested.

(c) An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

1.6.11 Admissibility of Evidence

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

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

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

1.6.12 Offer of Proof

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

1.6.13 Reservation of Evidentiary Ruling

(a) The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto.

(b) If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the ~~e~~e~~H~~Hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

1.6.14 Cross-Examination

(a) Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. Leading questions are permitted on cross-examination.

(b) The credibility of a witness may be attacked by any Participant, including the Participant calling the witness.

(c) The Hearing Officer and any member of the ~~[HEARING BODY]~~Hearing Body may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to ~~Section~~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]~~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]~~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

(a) Any Participant may call any adverse Participant, or any employee or agent thereof, during ~~the evidentiary~~ Testimonial ~~h~~Hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination.

(b) If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the ~~evidentiary~~Testimonial ~~h~~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~~Testimonial ~~h~~Hearing.

(c) Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

1.6.17 Close of the Evidentiary Record

(a) The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the ~~e~~Evidentiary ~~h~~Hearing.

(b) Evidence may not be added to the evidentiary record after it is closed, provided that, prior to issuance of the Hearing Body's final order, the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant. For the purpose of reopening the evidentiary record, newly discovered evidence that is material to the issues in dispute and could not, by due diligence, have been discovered prior to or during the Evidentiary Hearing, shall constitute good cause.

1.7 Post- Evidentiary Hearing Procedure

1.7.1 Briefs

- (a) At the close of the ~~e~~Evidentiary ~~h~~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 addition to or in lieu of briefs.
- (g) The Hearing Officer may establish reasonable wordpage limitations applicable to briefs.

1.7.2 Other Pleadings

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

1.7.3 Draft Initial Opinions

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

1.7.4 Hearing Officer's Initial Opinion

- (a) ~~Except as otherwise ordered by the [HEARING BODY], a~~At the conclusion of the ~~e~~Evidentiary ~~h~~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]~~Hearing Body's review and consideration.
- (b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues ~~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]~~Hearing Body require. ~~If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty.~~
- (c) 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~~Section 1.5.10.

1.7.5 Exceptions

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

1.7.6 Oral Argument

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

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

1.7.7 Additional Hearings

After the evidentiary record has been closed but before issuance of the Hearing Body's final order~~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]~~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]~~Hearing Body Final Order

(a) Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the ~~[HEARING BODY]~~Hearing Body shall issue its final order.

(b) Issuance of a final order shall require (i) a quorum of the ~~[HEARING BODY]~~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]~~Hearing Body, and (ii) majority vote of the members of the ~~[HEARING BODY]~~Hearing Body voting on the final order (which number of members voting shall not be less than a quorum).

(c) The ~~[HEARING BODY]~~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.

(d) The ~~[HEARING BODY]~~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".~~

(e) 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 ParagraphSection 1.5.10.

~~(f) 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 ~~e~~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]~~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, p~~Pre-e~~v~~identiary ~~h~~Hearing memorandums, briefs, and draft opinions;
- (13) Post-hearing pleadings other than briefs;
- (14) The Hearing Officer's initial opinion;
- (15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- (16) The ~~[HEARING BODY]~~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]~~Hearing Body or Hearing Officer of Technical Advisor and any responses or replies thereto.

1.7.10 Appeal

A ~~Participant or the Compliance Enforcement Authority may appeal a Final Order~~ of the ~~[HEARING BODY]~~Hearing Body may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 409. ~~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 5.6 of the NERC Compliance Monitoring and Enforcement Program and the Compliance Enforcement Authority's settlement procedures, provided, that the Compliance Enforcement Authority (i) may decline to engage in or continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation, and (ii) may terminate settlement negotiations at any time.

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

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

(b) The Registered Entity may contest the Remedial Action Directive by filing a written notice with the 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.

(c) 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

(a) Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this ~~Section~~Paragraph 1.9.2. The ~~full~~general hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive

hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this ~~Section~~Paragraph.

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

~~a)~~(1) The Hearing Officer ~~or the [HEARING BODY]~~ will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.

~~a)~~(2) An ~~evidentiary~~Testimonial ~~h~~Hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.

~~b)~~(3) At the ~~evidentiary~~Testimonial ~~h~~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.

~~e)~~(4) At the ~~evidentiary~~Testimonial ~~h~~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.

~~d)~~(5) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer ~~or the [HEARING BODY]~~. Oral argument shall not be held.

~~e)~~(c) The ~~[HEARING BODY]~~Hearing Body shall issue a summary written decision within ten (10) days following ~~submission of the last brief~~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~~the Hearing Body finds appropriate. Upon issuance of the summary written decision, the Registered Entity is required to comply with the Remedial Action Directive as specified in the summary written decision.

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