

**DOCKET NOS. RR06-1-012 AND RR07-8-002**

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO MARCH 21, 2008 ORDER**

**ATTACHMENT 4**

**REVISED AMENDED AND RESTATED DELEGATION AGREEMENT  
BETWEEN NERC AND  
FLORIDA RELIABILITY COORDINATING COUNCIL**

**ATTACHMENT 4A: CLEAN VERSION**

**ATTACHMENT 4B: REDLINED VERSION**



FLORIDA RELIABILITY COORDINATING COUNCIL, INC.  
1408 N. WESTSHORE BLVD. TAMPA, FL 33607-4512  
PHONE 813.289.5644 FAX 813.289.5646  
WWW.FRCC.COM

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July 3, 2008

Mr. David Cook  
Vice President, General Counsel and  
Director of Regulatory Services  
NERC  
Princeton Forrestal Village  
116-390 Village Boulevard  
Princeton NJ 08540-5731

RE: FRCC Regional Delegation Agreement

Dear David:

On June 27, 2008, the FRCC Board of Directors approved the following documents. The documents have been provided to you in both a redline and clean format. The FRCC feels these revisions meet the directives required by FERC in its March 21, 2008 Order regarding our Delegation Agreement.

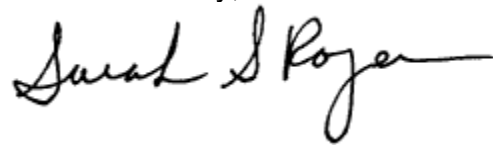
- **Amended and Restated Pro Forma Delegation Agreement**
- **Exhibit A – FRCC Boundaries (unchanged)**
- **Exhibit B – Amended Bylaws.** The FRCC has made the necessary changes in its Bylaws to meet the FERC's directives in its March 21, 2008 Order.
- **Exhibit C – FRCC Regional Reliability Standards Development Process (unchanged).**
- **Exhibit D – Compliance Monitoring and Enforcement**
- **FRCC Regional Compliance Monitoring and Enforcement Program indicating changes made against the NERC CMEP.** This includes Attachment 1 and Attachment 2 to the CMEP.
- **Exhibit E – Funding**

Mr. David Cook  
Page 2  
July 3, 2008

We are providing you with the final Delegation Agreement which has been approved by our Board of Directors on June 27, 2008 and is ready for execution. The FRCC is prepared to execute our Delegation Agreement following receipt of FERC approval of the revisions in the Delegation Agreement.

If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink, reading "Sarah S. Rogers". The signature is written in a cursive style with a long horizontal flourish extending to the right.

SARAH S ROGERS  
President and CEO

Enclosures

**ATTACHMENT 4A**

**CLEAN VERSION**

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND FLORIDA RELIABILITY COORDINATING COUNCIL**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2008, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Florida Reliability Coordinating Council, an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and FRCC may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

**WHEREAS**, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

**WHEREAS**, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter “Order 672”);

**WHEREAS**, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

**WHEREAS**, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

**WHEREAS**, the Act and Section 39.8 of the Commission’s regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as FRCC provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

**WHEREAS**, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

**WHEREAS**, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

**WHEREAS**, FRCC is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

**WHEREAS**, NERC will work through FRCC to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

**WHEREAS**, NERC has concluded that FRCC meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, NERC and FRCC agree as follows:

**1. Definitions.** The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to FRCC to propose and enforce Reliability Standards pursuant to the Act.

(d) FRCC's Rules means the bylaws, a rule of procedure or other organizational rule or protocol of FRCC.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

**2. Representations.**

(a) For purposes of its Delegated Authority, FRCC hereby represents and warrants to NERC that:

(i) FRCC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. FRCC is governed in accordance with its bylaws by a balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any FRCC decision and no single industry sector can veto any FRCC decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**<sup>1</sup>, and as so attached are in full force and effect. No other such corporate governance documents are binding upon FRCC.

(ii) As set forth in **Exhibit C** hereto<sup>2</sup>, FRCC has developed a standards development procedure, which provides the process that FRCC may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto<sup>3</sup>, FRCC has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to FRCC that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

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<sup>1</sup> The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

<sup>2</sup> The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

<sup>3</sup> The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.



### 3. Covenants.

(a) During the term of this Agreement, FRCC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the FRCC Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of FRCC under this Agreement without first obtaining the consent of FRCC which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and FRCC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

### 4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of [REGIONAL ENTITY] in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to FRCC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) Not Applicable.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, FRCC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

**5. Reliability Standards.**

In connection with its Delegated Authority, FRCC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords FRCC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through FRCC's process as set forth in **Exhibit C**. Proposals approved through FRCC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. FRCC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

**6. Enforcement.**

(a) In connection with its delegated authority pursuant to this Agreement, FRCC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and FRCC agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. FRCC may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, FRCC agrees to comply with the NERC Rules in implementing this program.

(b) FRCC shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was

or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and FRCC shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by FRCC shall be filed with NERC, in accordance with the NERC Rules.

(e) FRCC shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) FRCC shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, FRCC shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review FRCC's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) FRCC shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights

and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

**7. Delegation-Related Services.** NERC will engage FRCC on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

**8. Funding.** FRCC and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund FRCC activities necessary for FRCC to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon FRCC without providing appropriate funding to carry out such mandates;

(b) FRCC and NERC agree that costs of carrying out FRCC's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is proposed by FRCC and approved by NERC and the Commission. If FRCC proposes to use a formula other than net energy for load beginning in the following year, FRCC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and FRCC to the Commission pursuant to 18 C.F.R. §39.4 for such year;

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide FRCC with the form for budget submittal no later than April 30 of the prior year.

(e) FRCC shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other FRCC activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The FRCC budget submission shall include supporting materials, including FRCC's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. FRCC shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(f) FRCC's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve FRCC's budget for meeting its responsibilities under the Delegation Agreement.

(h) FRCC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) FRCC shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of FRCC in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which FRCC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which FRCC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of FRCC.

**9. Assignment.** This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. FRCC may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit FRCC from contracting with other entities to assist it in carrying out its Delegated Authority, provided FRCC retains control and responsibility for such Delegated Authority.

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided

in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years, from the original effective date of May 2, 2007, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that FRCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If FRCC meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of FRCC's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time FRCC may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be

effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

**12. Limitation of Liability.** FRCC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and FRCC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the FRCC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the FRCC or NERC is found liable for gross negligence or intentional misconduct, in which case FRCC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

**13. No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt



notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

**15. Amendment.** Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

**16. Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of FRCC under this Agreement without first obtaining the consent of FRCC, which consent shall not be unreasonably withheld or delayed. To the extent FRCC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of FRCC under this Agreement, FRCC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by FRCC to NERC and the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

**17. Dispute Resolution.** In the event a dispute arises under this Agreement between NERC and FRCC representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

**18. Notice.** Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric  
Reliability Corporation  
116-390 Village Blvd.  
Princeton, NJ 08540-5721  
Attn: David Nevius  
Facsimile: (609) 452-9550

If to FRCC:

Florida Reliability Coordinating Council  
1408 N. Westshore Blvd.  
Suite 1002  
Tampa, FL 33607-4512  
Attn: Sarah Rogers  
Facsimile: (813) 289-5644

**19. Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

20. **Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. **Savings Clause.** Nothing in this Agreement shall be construed to preempt or limit any authority that FRCC may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. **Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. **Execution of Counterparts.** This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

**NOW THEREFORE**, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

FLORIDA RELIABILITY  
COORDINATING COUNCIL

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Sarah S. Rogers

Title: \_\_\_\_\_

Title: President & CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

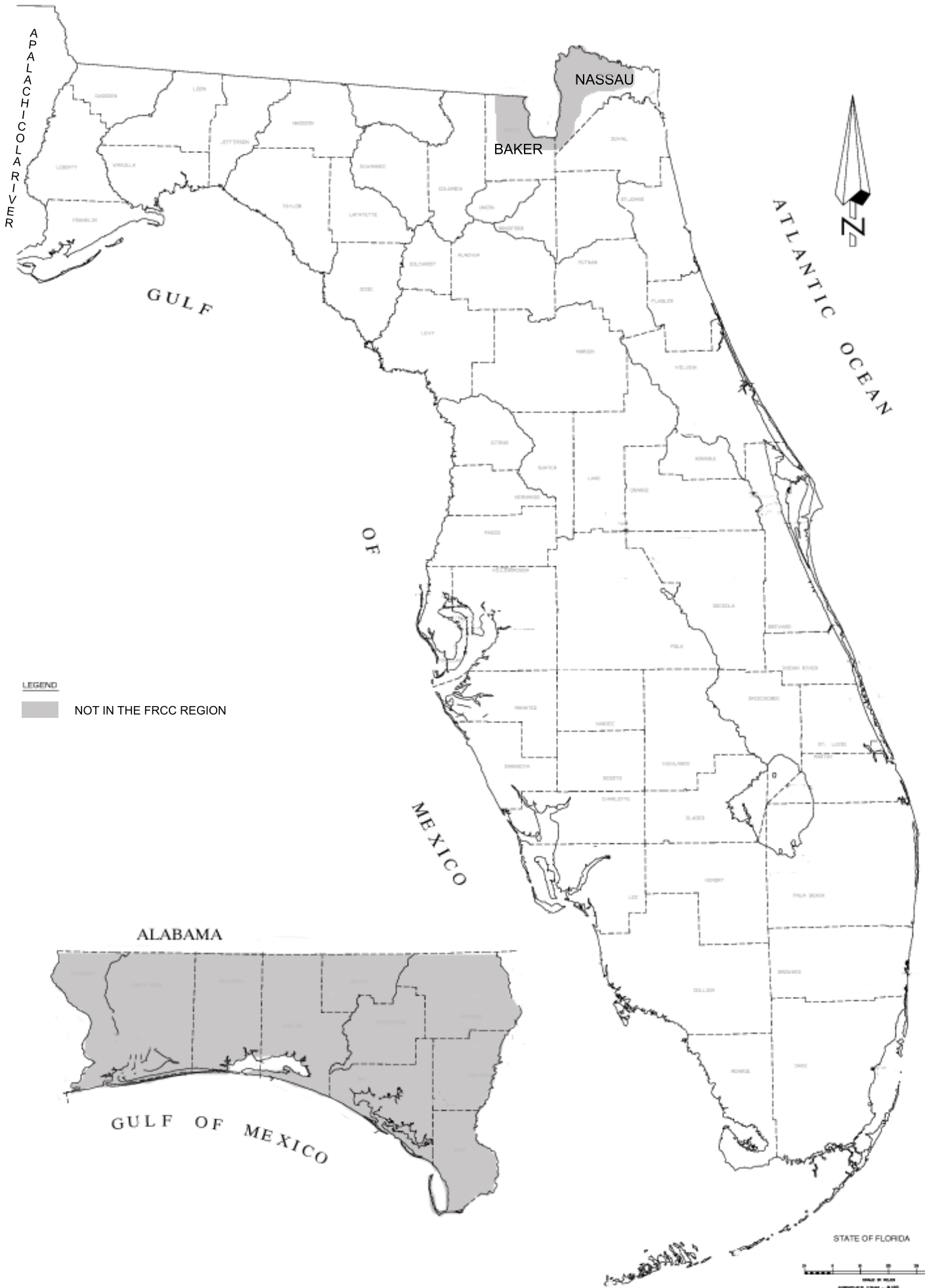
## **Exhibit A —FRCC Boundaries**

(see attached map)

The FRCC physical boundaries are entirely within the State of Florida. The area of the State of Florida that is within the FRCC Region is peninsular Florida east of the Apalachicola River with the exception of a small section of Baker and Nassau counties in northeast Florida. Areas west of the Apalachicola River in Florida are within the SERC Region. The entire FRCC Region is within the Eastern Interconnection. The entire FRCC Region is under the direction of the FRCC Reliability Coordinator.

The FRCC Region interconnects with the SERC Region via 10 transmission lines. The 10 lines consist of two 500 kV, four 230 kV and four 115 kV lines. These lines are referred to as the “Florida / Southern Interface”.

The areas of Baker and Nassau counties that are not part of the FRCC Region are part of the SERC Region. These sections are part of the Okefenokee Rural Electric Membership Corporation (OREMC) that is headquartered in Nahunta, GA. Roughly two thirds of OREMC load is in Georgia and one third is in Florida. The majority of the OREMC load in Florida is connected directly to the Southern Company Balancing Area in the SERC Region. A small portion of the OREMC load, about five MW, is supplied as a radial feed from FPL West Nassau Substation. OREMC has secured firm transmission service from JEA on the Florida / Southern Interface to supply this load. The OREMC schedules energy on an hourly basis to cover this load. SERC will be responsible for registration and compliance monitoring of OREMC.



**LEGEND**

NOT IN THE FRCC REGION

ALABAMA

GULF OF MEXICO

STATE OF FLORIDA

Scale bar and projection information.

## Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

**CRITERION 1:** The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

**CRITERION 2:** The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

**CRITERION 3:** If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

**CRITERION 4:** The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

**CRITERION 5:** The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

**EXHIBIT B  
TO PRO FORMA DELEGATION AGREEMENT**

**BYLAWS  
Florida Reliability Coordinating Council, Inc.**

*Amended June 27, 2008*



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Amended and Restated FRCC Regional Delegation Agreement  
Revised for July 21, 2008 Compliance Filing



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**BYLAWS OF  
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**

**ARTICLE I**

**Membership**

**Section 1.1 Eligibility.**

(a) Membership in the Florida Reliability Coordinating Council, Inc. (“FRCC”) is open to any entity, without cost, that: (i) has a material interest in the reliability of the bulk power system in the FRCC region; (ii) satisfies the criteria for membership specified in this Section 1.1; (iii) qualifies for eligibility in one or more of the Sectors identified in Section 1.2; (iv) submits a written request for membership; and (v) agrees to comply with and be bound by these FRCC Bylaws (“Bylaws”) and other rules and regulations adopted by the FRCC Board of Directors, by execution of the appropriate form of Member Agreement set forth in Appendix A to these Bylaws (“Member Agreement”). Any person or entity that meets the foregoing requirements shall become a “Member” of FRCC.

(b) FRCC shall engage in two categories of activities:

(i) FRCC shall engage in the “Regional Entity Activities” specified in Section 1 of Exhibit E of the Delegation Agreement between FRCC and the North American Electric Reliability Corporation (“NERC”) dated May 2, 2007, as amended from time to time with the agreement of NERC and the approval of the Federal Energy Regulatory Commission (“Delegation Agreement”). Under the Delegation Agreement, FRCC is the Regional Entity, as defined in Sec. 215 of the Federal Power Act, with delegated authority to propose and enforce Reliability Standards for the bulk power system in the FRCC Region. The FRCC Region is defined as the geographic area of Florida east of the Apalachicola River.

(ii) FRCC shall engage in certain “Member Services Activities,” under which it provides, coordinates or administers a variety of services relating to the planning and operation of the bulk power system in the FRCC Region for or on behalf of entities meeting the criteria in Section 1.1(c)(ii) and participating in the funding of such services as specified in these Bylaws. The “Member Services” are specified in the business plan and budget approved by the Board of Directors in accordance with these Bylaws for submission to NERC under the Delegation Agreement, and as approved by NERC and the Federal Energy Regulatory Commission (“Business Plan and Budget”). Member Services are funded as specified in Section 6.2 of these Bylaws.

(c) FRCC shall have two types of Members:

(i) All Members of FRCC shall be “Regional Entity Members.” Regional Entity Members shall be eligible to participate in the Regional Entity Activities of FRCC. Such participation shall be in accordance with these Bylaws, the Member Agreement, and the Delegation Agreement, as from time to time adopted or amended and approved, and such other requirements as govern FRCC as a Regional Entity.

(ii) All Members that participate in the generation, marketing, transmission or purchase for resale of electric energy, ancillary services or capacity on, from or to the bulk power system in the FRCC Region may choose to be “Services Members,” and may participate in FRCC Member Services Activities as specified in these Bylaws. Subject to the requirements of Section 1.2, only Members that are Services Members shall be eligible to participate in decisions governing the Member Services of FRCC, or the voting rights and funding obligations of Services Members.

**Section 1.2 Voting Member.** A Voting Member is a Member that is not an Affiliate Member or an Adjunct Member. All Voting Members shall be eligible to vote on questions governing Regional Entity Activities. Only Voting Members that are Services Members shall be eligible to vote on questions governing Member Services or Member Services Activities. For purposes of the following Sector classifications, “Load Serving Entity,” whether standing alone or as part of another specified term, shall mean an entity that provides electric service to persons or entities other than the Load Serving Entity itself that purchase such service for their own use and not for resale. Voting Members shall be classified into one of the following Sectors, based on the primary nature of its activities in the FRCC Region relevant to Regional Entity Activities:

(a) **Suppliers Sector** - any entity engaged in wholesale power marketing transactions in the FRCC Region; or a generating entity that is included in the NERC Compliance Registry as a generation owner or generation operator for a facility in the FRCC Region, or that owns or is developing generation greater than 20 MW located within the FRCC Region and meets any of the following: (1) an entity with FERC-approved market-based rate authority, or (2) an exempt wholesale generator, or (3) a facility selling any output pursuant to a power purchase agreement (including fuel conversion arrangements), or (4) a FERC approved Qualifying Facility.

(b) **Non-Investor Owned Utility Wholesale Sector** - generation and transmission cooperatives and municipal joint action agencies that sell electricity to non-investor owned Load Serving Entities with native load in the FRCC Region.

(c) **Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates less than 25% of its energy requirements for retail sales or has an annual Full Requirements Energy for Load (FREL) of 1800 GWH or less in the FRCC Region.

(d) **Generating Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates at least 25% of its energy requirements for retail sales, and that has an annual Full Requirements Energy for Load (FREL) greater than 1800 GWH in the FRCC Region.

(e) **Investor Owned Utility Sector** - investor owned utilities generating and serving retail native load greater than 15,000 GWH in the FRCC Region.

(f) **General Sector** - persons or entities that take delivery of energy within the FRCC Region that is not purchased for resale; agents or associations representing groups of such entities that are commercial or industrial entities; agents or advocate groups representing small customers; and other persons or entities owning assets or engaging in commercial activities in the FRCC Region.

**Section 1.3 Affiliate Member.** An Affiliate Member is defined as an entity that (i) otherwise qualifies as a Voting Member pursuant to Section 1.1 and 1.2 and (ii) is an Affiliate of a Voting Member. For purposes of these Bylaws, being an “Affiliate” shall mean that (1) a Voting Member controls, is controlled by or is under common control with, such Affiliate Member, and (2) for any exempt wholesale generator, as defined the Public Utility Holding Company Act of 2005, as amended, the meaning provided in Section 214 of the Federal Power Act. Affiliate Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Affiliate Members shall be bound by the same obligations as Voting Members and Adjunct Members of FRCC. Questions as to whether an entity is an Affiliate of a Voting Member shall be resolved by the Board.

**Section 1.4 Adjunct Member.** A person or entity may be approved as an Adjunct Member by the Board if such entity has a material interest in the reliability of the bulk power system in the FRCC region but does not meet the definitions and requirements to join as a Voting Member or Affiliate Member. Adjunct Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Adjunct Members shall be bound by the same obligations as Voting Members and Affiliate Members of FRCC.

**Section 1.5 New Members.** The Board shall review and act upon membership applications. Prior to membership, the Board shall certify that an applicant complies with the eligibility requirements.

**Section 1.6 Membership Commitment.** Each Member of the FRCC shall be required to execute, in counterpart, a Member Agreement, as applicable, in the form shown in Appendix A to these Bylaws.

### **Section 1.7 Obligations.**

(a) Each Member of the FRCC shall promote, support and comply with the purposes and policies of the FRCC as set forth in its Certificate of Incorporation and Bylaws, and the other documents governing the activities of FRCC identified in the Bylaws.

(b) Each Member of the FRCC shall appoint a representative as provided herein to receive notices from the FRCC and shall give to the FRCC Chief Executive Officer (“CEO”) in writing (signed by a duly authorized representative of the Member) the name, business address and electronic address of the person thus appointed. An appointed representative of a Member who is unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Member.

## **Section 1.8 Participation.**

(a) For purposes of these Bylaws, an entity and all of its Affiliates shall be considered one "Entity." No Entity shall simultaneously hold more than one Voting Member status or have more than one voting representative on a Standing Committee, or more than one seat on the Board.

(b) An Entity may join FRCC in any Sector in which it qualifies for Membership, provided that an Entity may join as a Voting Member in only one Sector. In the event that an Entity qualifies for more than one Sector, such Entity may join such other Sectors as an Affiliate Member upon payment of any applicable Affiliate Member Annual Fees in accordance with Article VI Section 6.2(b)(ii) for each Sector in which such Entity desires to participate as an Affiliate Member. Once an Entity has elected to be a Voting Member of one Sector, the Entity must continue to vote in that Sector for a minimum of one (1) year. If, at any point, it is determined that an Entity no longer meets the qualifications for the Sector it selected, the Entity may not vote in that Sector; however, that Entity may then immediately elect to become a Voting Member in any Sector for which it does qualify. Questions as to whether an Entity meets the qualifications of a Sector shall be resolved by the Board.

(c) Subject to the requirements of these Bylaws and the Articles of Incorporation, each Voting Member in good standing is entitled to vote on each matter submitted to a vote of the Voting Members. A Member in good standing is one that (i) meets all qualifications for membership as provided in these Bylaws, (ii) is not in arrears for payment of any applicable annual fees for membership or payment of any other fees owed to FRCC unless such payment is being disputed in good faith, and (iii) has not been found by a court to be in breach of any contract with FRCC. Voting Members that are not in good standing are not entitled to vote on any matter until they have regained good standing.

## **ARTICLE II**

### **Meetings of Voting Members**

**Section 2.1 Annual Meeting of Voting Members.** Voting Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). The Voting Members from each Sector shall elect, by majority vote, each Voting Member having one (1) vote, Directors to the Board who will represent their Sector. The Voting Members shall conduct such other business as may be properly brought before them. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. The Annual Meeting shall be open to Affiliate Members and Adjunct Members, and such other invitees as the Board may deem appropriate, provided that the Services Members, along with Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), may meet separately to consider matters relating to Member Services.

**Section 2.2 Special Meetings.** Special meetings of the Voting Members, for any purpose or purposes, unless otherwise prescribed by the laws of the State of Florida, or by the

Articles of Incorporation, may be called by the Chair of the Board. Special meetings of the Regional Entity Members shall be called upon request of six (6) or more Voting Members representing three (3) or more Sectors. Special meetings of the Services Members shall be called upon request of six (6) or more Voting Members that are Services Members representing three (3) or more Sectors. Notice of a special meeting stating the place, date, hour and agenda for the special meeting shall be given to the Voting Members not less than three (3) business days before the meeting. Such request for a special meeting shall state the purpose or purposes of the proposed special meeting, which shall be included as part of an agenda to be distributed to the Voting Members not less than three (3) business days before the meeting. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other.

**Section 2.3 Place of Meeting.** All meetings shall be held at or near the principal office of the FRCC in Tampa, Florida, or at such other place within or outside the State of Florida as shall be determined from time to time by the Board.

**Section 2.4 Notice of Meetings.**

(a) Notice of the Annual Meeting or any regular or special meeting of the Voting Members shall be sent by mail or electronic means to each Member's representative at the business or electronic address specified in accordance with Section 1.7(b) at least ten (10) business days before the date of the meeting. The notice shall set forth a proposed agenda for the meeting, but any matter may be considered and acted upon at any meeting, whether or not the matter was listed in the proposed agenda, if addition of the item to the agenda is approved at the meeting by the vote of the eligible Voting Members whose votes equal sixty percent (60%) or more of the total weighted sector vote of the eligible Voting Members; provided, however, that at least three (3) Sectors are represented in the affirmative. Meetings may be held at any time without notice if all of the eligible Voting Members are present, or if those not present waive notice in writing either before or after the meeting.

(b) The record date for determining Members entitled to notice shall be one month prior to the meeting date.

**Section 2.5 Quorum.** Representation at any meeting of the Regional Entity Members of more than 50% of the Voting Members, or representation at any meeting of the Services Members of more than 50% of the Voting Members that are Services Members, shall constitute a quorum for the transaction of business at such meeting; provided, however, that in each case at least four (4) eligible Sectors are represented.

**Section 2.6 Voting.** Voting by Voting Members shall be by the six (6) Sectors as defined in Section 1.2, except as otherwise provided herein. Each Voting Member within a Sector has one non-divisible vote. Each Sector shall have a “Sector Vote” in proportion to the voting rights specified in Section 3.2(e), which is to be split into an affirmative and a negative component, in the proportion that each component bears to the total votes of the Voting Members within that Sector. Action by the Voting Members shall require affirmative Sector Votes greater than 6.50.

**Section 2.7 Action without Meeting.** Any action that may be taken at a meeting of the Regional Entity Members or the Services Members may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed by all Voting Members eligible to vote in such meeting before the action is taken.

**Section 2.8 Remote Attendance.** Any Member otherwise eligible may participate in any meeting by telephone, videoconference communications equipment, or other means enabling all persons participating in the meeting to communicate with each other. A Member participating in a meeting by such means shall be deemed present in person at such meeting.

**Section 2.9 Termination of Members.**

(a) A Member may be terminated for non-payment of fees or monies due FRCC as provided in Section 6.3, or for a significant violation of obligations as set forth in Section 1.7. The Board may, by resolution, establish a fair and reasonable procedure to terminate a Member.

(b) A Member whose membership has been terminated shall be liable to FRCC for fees and any other monies due FRCC as a result of obligations incurred or commitments made prior to termination.



**Section 2.10 Withdrawal.** Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of FRCC at any time upon written notice to the CEO, whereupon it shall cease to be a Member and shall cease to be entitled or obligated to participate in the activities of the Board, Standing Committees, or any subcommittees, and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of fees and expenses for a fiscal year, the Member shall be obligated to pay its fees and other monies due to FRCC for the full fiscal year within which such termination is effective.

**Section 2.11 Reinstatement.** A former Member shall be required to apply for Membership as set forth in Section 1.1. The Board may reinstate Membership on any reasonable terms that the Board deems appropriate.

**Section 2.12 Property Ownership and Control.** Subject to applicable laws, rules, regulations, agreements, and FRCC protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction, maintenance and operation of its own facilities, present and future. A Member has no interest in the property of FRCC and waives the right to require a partition of any FRCC property.

## **ARTICLE III**

### **Board of Directors**

**Section 3.1 Powers.** The affairs of FRCC shall be managed by the Board of Directors ("Board"). The Board may exercise all such powers of the FRCC and do all such lawful acts and things as are not prohibited by the laws of the State of Florida, by the Federal Power Act, by the Articles of Incorporation or by these Bylaws.

#### **Section 3.2 Number, Election, Tenure and Governance.**

(a) Number. The Board shall include (16) Directors allocated among the Sectors as follows, and such other Directors as provided in by Section 3.2(b)(4):

- (1) Suppliers Sector- three (3) Directors
- (2) Non-Investor Owned Utility Wholesale Sector - two (2) Directors
- (3) Load Serving Entity Sector-
  - Municipal - one (1) Director
  - Cooperative - one (1) Director
- (4) Generating Load Serving Entity Sector - three (3) Directors

- (5) Investor Owned Utility Sector - Three (3) Directors
- (6) General Sector - Two (2) Directors
- (7) The CEO of FRCC - an ex-officio non-voting Director.

(b) Election.

(1) Directors, with the exception of the CEO, shall be elected as described herein.

(2) Within each Sector, only Voting Members from a given Sector may elect Directors for that Sector.

(3) Within the Load Serving Entity Sector, Director(s) representing 0.5 votes shall all be from a municipal and Director(s) representing 0.5 votes shall be from a cooperative.

(4) Within each Sector, Voting Members from a given Sector may, by majority vote, elect additional Directors subject to a maximum of five (5) Directors representing such Sector. The total votes of the Directors for such Sector shall not exceed the total votes of the Directors of such Sector specified in Section 3.2(a).

(c) Alternate Director. Any Director unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Director.

(d) Term. The term for all Directors shall be two (2) years. Any Director may be reelected for consecutive terms, without limitation. Directors within a Sector shall have staggered terms as determined by the Sector.

(e) Voting Rights.

(1) Except as provided for in subsections (2) and (3) below, each Sector shall have the number of votes as specified below:

- Suppliers Sector 2.5 Votes
- Non-Investor Owned Utility Wholesale Sector 2.0 Votes
- Load Serving Entity Sector
  - Municipal 0.5 Votes
  - Cooperative 0.5 Votes
- Generating Load Serving Entity Sector 3.0 Votes
- Investor Owned Utility Sector 3.5 Votes
- General Sector 1.0 Vote

Total 13.0 Votes

(2) Each Director, as defined in Section 3.2(a) and 3.2 (b), shall have an equal proportional vote of that Sector's total voting strength. This provision shall

apply separately to the municipal and cooperative Directors of the Load Serving Entity Sector.

- (3) If the majority of the Voting Members of a Sector are Services Members, Directors elected by that sector shall be deemed "Services Member Directors." Only Services Member Directors shall be eligible to vote on questions governing Member Services or Member Services Activities. Deliberations on such matters may be limited to Services Member Directors, Voting Members that are Services Members, and Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), upon the vote of the Services Member Directors.
- (4) The CEO of FRCC shall not have a vote.

(f) **Limitations.** Each person or alternate serving on the Board shall be a representative of a Voting Member. Unless otherwise provided in these Bylaws, if a representative of a Voting Member is elected to serve on the Board, such person shall only be eligible to serve in such capacity so long as such person remains the representative of said Voting Member. A Voting Member shall not have more than one (1) officer, employee or agent serving as a Director.

**Section 3.3 Meetings.** Regular meetings of the Board shall be held at such times and places, within or outside the State of Florida, as may be determined by the Board. Special meetings of the Board may be called by the Chair. Special meetings shall be called upon request of six (6) or more Directors. Regular or Special Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. Except as specified in Section 3.2(e)(3), the meetings of the Board shall be open to all Members, and such other invitees as the Board may deem appropriate. The Board may meet in closed session to discuss matters of a confidential nature, including but not limited to personnel matters, litigation, or commercially sensitive information of any person or entity.

**Section 3.4 Notice of Meetings.** Notice of any regular or special meeting of the Board shall be sent by mail or electronic means to each Director, and to each Member, at such Director's and Member's usual place of business at least (ten) 10 business days, in the case of a regular meeting, or (five) 5 business days, in the case of a special meeting, before the date of the meeting. Such notice shall also be sent to the observers of the Board specified in Section 8.1. The notice shall set forth a proposed agenda for the meeting. Subject to the requirements of Section 3.2(e)(3), no agenda item may be added to the agenda at any meeting of the Board which requires action by the Board unless all Directors are present and all agree to allow such an item to be put to a vote. Meetings may be held at any time without notice if all of the Directors of the Board are present, or if those not present waive notice in writing either before or after the meeting.

**Section 3.5 Quorum.** The presence at a meeting of the Directors whose votes equal sixty percent (60%) or more of the total voting strength of the Board, or in the case of matters governed by Section 3.2(e)(3), votes equal to sixty percent (60%) or more of the total voting

strength of the Directors eligible to vote, shall constitute a quorum for any action of the Board, provided, however, that in each case at least one Director from at least four (4) Sectors are present. If at any meeting a quorum shall fail to attend, a majority of those Directors present at the meeting may adjourn that meeting without further notice until a quorum shall attend. Once a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**Section 3.6 Voting.** Action by the Board shall require approval of sixty percent (60%) or more of the total eligible voting strength of the Board.

**Section 3.7 Remote Attendance.** Directors shall be deemed present and voting at a meeting of the Board if participating in the meeting by means of a conference telephone, video conferencing, or other means enabling all persons participating in the meeting to communicate with each other.

**Section 3.8 Action without Meeting.** Any action that may be taken at a meeting of the Board may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed before the action by all Directors eligible to participate in such action.

**Section 3.9 Vacancies and Removal.** A Director may be removed with cause at any time by an affirmative vote of 60% of the Voting Members of the Sector that elected that Director. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the remaining total voting strength of the Board. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner. A vacancy may be filled only by the Voting Members of the Sector in which the vacancy occurs. Any Director so chosen shall hold office until his or her successor is duly elected and qualified or until his or her earlier resignation, ineligibility or removal.

**Section 3.10 Officers.** At the Board of Directors meeting following the Annual Meeting of the Voting Members, the Board shall elect a Chair, Vice Chair, and Secretary-Treasurer, who shall be the officers of the FRCC. No two officers of FRCC shall be officers, employees or agents of Voting Members of the same Sector or its Affiliates. The CEO of FRCC may not be elected to act as Chair, Vice-Chair or Secretary/Treasurer.

(a) **Term of Office.** Each officer of the Board of Directors shall hold office for two (2) fiscal years, and until his or her successor is duly elected and qualified.

(b) **Removal of Officers.** Any officer of the Board of Directors may be removed with or without cause at any time by the affirmative vote of seventy percent (70%) of the total voting strength of the Board.

(c) **Compensation.** There shall be no compensation paid to any officer of the Board of Directors of FRCC, provided that an officer serving on the staff of FRCC may be compensated for their services on the staff of FRCC.

### **Section 3.11 Responsibilities of Board of Director Officers**

(a) Chair. The Chair shall serve as the Chair of the Board. The Chair shall preside at all meetings of the Members and Board, provided that, if the Chair is not eligible to vote in a meeting governed by Section 3.2(e)(3), the Directors that are eligible shall select one of the number to preside at such meeting. The Chair shall be responsible for the preparation of the agenda for all meetings of the Members and Board. The Chair shall be a member of and preside over a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(b) Vice Chair. The Vice Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair, subject to the provisions of Section 3.11(a), and shall perform such other duties and have such other powers as the Board may from time to time prescribe. The Vice Chair shall be a member of a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(c) Secretary-Treasurer. The Secretary-Treasurer shall be responsible to assure that the FRCC staff has adequate procedures to distribute the agenda of the meetings of the Voting Members and the Board, keep the minutes of the proceedings of said meetings, and maintain the financial books and records of the FRCC, including disbursement of the funds of the FRCC in accordance with the authorized annual budget. The Secretary-Treasurer shall be a member of the Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

**Section 3.12 Vacancy.** Any vacancy in a Board of Director Officer occurring for any reason shall be filled as specified in Section 3.9.

## **ARTICLE IV**

### **Chief Executive Officer**

**Section 4.1 CEO.** The Board shall hire the CEO who, under the Board's direction, shall carry on the general affairs of the FRCC. The CEO shall be a member of the staff of FRCC and shall be a non-voting Director. It shall be the CEO's duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of FRCC. The CEO shall serve as President of FRCC. The CEO shall comply with all directives of the Board. All agents and employees shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

## **ARTICLE V**

### **Standing Committees**

**Section 5.1 Standing Committees.** There shall be a Planning Committee, an Operating Committee, a Compliance Committee, and such other committees, subcommittees,

and task forces as the Board may appoint, when deemed necessary to carry out the purposes of the FRCC.

**Section 5.2 Planning Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Planning Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Planning Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Planning Committee shall report directly to the Board and is charged with the responsibility of promoting the reliability of the bulk power system in the FRCC Region, and assessing and encouraging generation and transmission adequacy. The Planning Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.3 Operating Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Operating Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Operating Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Operating Committee shall report directly to the Board and is charged with responsibility for the coordination, operations planning, operation and maintenance of the bulk power system in the FRCC Region. The Operating Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.4 Compliance Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Compliance Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Compliance Committee shall report directly to the Board and is charged with responsibility for the development and implementation of programs to ensure compliance for both FRCC Regional Reliability Standards and NERC Reliability Standards. The Compliance Committee is not to be confused with the Board Compliance Committee which is primarily a “hearing body” and has a different voting structure as outlined in Exhibit D of the Delegation Agreement between the North American Electric Reliability Corporation and FRCC.

**Section 5.5 Rules of Procedure.** Each Standing Committee shall set its rules of procedure, provided that quorum, voting rights and voting shall be as specified in Sections 5.7 and 5.8. Such Rules of Procedure shall be as approved by the Board. All action by any Standing Committee shall be reported as prescribed herein and shall be subject to revision, alteration and approval by the Board.

**Section 5.6 Quorum.** Representation at any meeting of a Standing Committee of sixty percent (60%) or more of the total voting strength of the Standing Committee shall constitute a quorum for the transaction of business at such meeting; provided, however, that action on matters dealing with the scope or funding of Member Services shall require sixty percent (60%) or more of the total voting strength of members of the Standing Committee

representing Voting Members that are Services Members; and provided further that a quorum shall require that at least three (3) Sectors are represented, all three of which shall be Sectors a majority of the members of which are Services Members in the case of a quorum for action on matters governing Member Services.

**Section 5.7 Voting. Voting is by Sector.** Each voting representative present at a meeting is assigned a vote equal to the voting strength of his or her Sector, as provided in this section, divided by the number of voting representatives present in that Sector, except that no voting representative present at a meeting shall have more than one (1) vote, except an Investor Owned Utility Sector voting representative who may have up to 1.167 votes. Action by a Standing Committee shall require an affirmative vote equal to or greater than sixty percent (60%) of the total eligible voting strength of the Standing Committee.

Sector Votes

(1) Suppliers Sector	2.5 Votes
(2) Non-Investor Owned Utility Wholesale Sector	2.0 Votes
(3) Load Serving Entity Sector	
Municipal	0.5 Vote
Cooperative	0.5 Vote
(4) Generating Load Serving Entity Sector	3.0 Votes
(5) Investor Owned Utility Sector	3.5 Votes
(6) General Sector	1.0 Vote
Total	13.0 Votes

Only representatives of Voting Members that are Services Members shall be eligible to vote on questions governing Member Services.

**Section 5.8 Meetings.** Regular meetings of the Standing Committees shall be held at such times and places, within or outside the State of Florida, as may be determined by the Standing Committees. Special meetings of the Standing Committees may be called by the Chair or upon the request of representatives from three (3) different Sectors. Regular or Special Meetings may be held by telephone conferencing, video conferencing, or by other means enabling all participants in the meeting to communicate with each other. The meetings of the Standing Committees shall be open to all Members, and such other invitees as the Board may deem appropriate.

**ARTICLE VI**

**General Provisions**

**Section 6.1 Budget.** The Board shall annually adopt a budget for the FRCC for administrative expenses of the FRCC, including salaries, and for the costs associated with the various committees, subcommittees, professional services, projects and studies. The Board shall approve the scope and funding of Member Services, in accordance with the provisions of these

Bylaws. The funding for Member Services special projects approved by the Board may be based on a special funding, with an equitable allocation of the costs for the special project as approved by the Board. The budget may be amended from time to time during the fiscal year as determined by the Board, subject to the filing and approval requirements applicable to FRCC as a Regional Entity under the Delegation Agreement.

## **Section 6.2 Funding.**

(a) The funding of FRCC's Regional Entity Activities shall be in accordance with the provisions of Exhibit E and the section numbered eight (8) of the Delegation Agreement.

(b) The Member Services of FRCC shall be funded through an allocation of their costs to all Members that are Services Members in accordance with the provisions of subsections 6.2(b)(i) - (iii) below. The funding of all Member Services shall be kept separate from the funding of Regional Entity Activities as specified in the Business Plan and Budget.

(i) **Services Members.** The allocation for Voting Members that are Services Members shall be based on the following calculation; provided, however, that in no event shall the allocation be less than \$20,000 per annum.

$$\text{Services Member Allocation} = 0.25 (1/N) + 0.25 (B/C) + 0.25 (D/E) + 0.25 (F/G)$$

- N Total number of voting Services Members
- B Voting Services Member's previous-year Full Requirements Energy for Load (FREL) within the FRCC
- C Total of factor B for all voting Services Members
- D Voting Services Member's Net Summer Generating Capacity within the FRCC Region as of December 31 of the previous year, as defined in the FRCC Load and Resource Plan
- E Total of factor D for all voting Services Members
- F Sum of Circuit Miles of Transmission Facilities (69kV and above) of voting Services Members within the FRCC Region times the respective operating voltage as of December 31 of the previous year
- G Total of factor F for all voting Services Members

**Full Requirements Energy for Load (FREL)** The net electrical energy requirements of the Services Member's electric system, and the net electric energy requirements of all full requirements customers of the Services Member, except if a full requirements customer of a Services Member joins FRCC. In such case, the electrical energy requirements of such full requirements customer will only be counted for the funding calculation for that Services Member who is the full requirements customer, and not for the Services Member who is the supplier of the full requirements. There should be no double counting of FREL between Services Members.

**Net Summer Generating Capacity** The maximum summer rated capacity,



modified for ambient limitations, that a generating unit can sustain over a specified period, less the capacity used to supply the demand of station service or auxiliary needs. For jointly owned units, the Net Capacity will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

**Circuit Miles of Transmission Facilities** The distance (following the path of transmission facility) in miles between substations or switching stations times the number of circuits at the same voltage level. For jointly owned transmission facilities, the Circuit Miles of Transmission Facilities will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

(ii) Affiliate Members. The fee for an Affiliate Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Affiliate Member, only participating in Regional Entity Activities, shall be waived.

(iii) Adjunct Members. The fees for an Adjunct Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Adjunct Member, only participating in Regional Entity Activities, shall be waived.

**Section 6.3 Fees.** The Member Services membership fee shall be due and payable concurrent with the submission of the written application for membership. The initial membership fee will be prorated on an annual basis depending upon the quarter in which a Member joins. Thereafter, membership fees shall be due and payable on or before January 1st of each year or in installments as determined by the Board. The FRCC shall notify, in writing, any Member who is delinquent in the payment of any applicable membership fee. The notice shall provide a time certain, not to exceed thirty days (30) days from the date of the written notice, during which any such delinquency may be cured. Failure to cure a delinquency within the stated time will result in the loss of all membership rights and designations. In the event of an uncured lapse in the payment of a fee, membership in the FRCC shall be terminated.

**Section 6.4 Staff.** The FRCC shall employ a staff, including the CEO, to carry out the objectives of the organization. The CEO shall be a non-voting Director of the Board. The duties of the CEO are as defined in Article IV, Section 4.1.

**Section 6.5 Expenses.** The personal expenses of each Member and Director participating in the activities of the FRCC and its committees and subcommittees shall be borne by the Member on whose behalf such person is acting, unless determined otherwise by the Board.

**Section 6.6 Minimum Sector Membership.** If the number of Voting Members of a Sector is not greater than one (1), such Sector shall not be entitled to a vote at the Voting Members meetings, Board of Directors meetings, or the Standing Committee meetings.

**Section 6.7 Indemnification.** The FRCC shall indemnify and hold harmless, to the maximum extent permitted by law, any Member, Director, Member representative, agent, officer or employee of the FRCC and the heirs, estates, successors or assigns of any of them, from any and all claims or liabilities, including costs or attorneys' fees for defending against assertion of any such claim or liability, arising from any act or failure to act of such person for, on behalf of, or at the direction of the FRCC, unless such act or failure to act constituted a willful violation of state, federal or local law, willful misconduct, or gross negligence. With the approval of the Board, the FRCC may reimburse costs, attorneys fees, and other expenses for defending against assertions of any such claims or liabilities prior to the final disposition of any such proceeding. The foregoing rights to be indemnified, held harmless, or reimbursed shall not operate in derogation or prohibition of any other rights which the person indemnified, held harmless or reimbursed may have. The FRCC, by vote of the Board, shall purchase insurance against all or any part of the liabilities which may be incurred by the FRCC and may cause the FRCC to indemnify and hold harmless as and to the extent it may deem appropriate such other person or persons as it may deem appropriate.

**Section 6.8 Fiscal Year.** The fiscal year of the FRCC shall be the twelve (12) month period of January 1<sup>st</sup> through December 31<sup>st</sup>.

**Section 6.9 Depositories.** All funds of the FRCC shall be deposited in the name of the FRCC in such bank, banks or other financial institutions as the CEO shall from time to time designate and shall be drawn out on checks, drafts or other orders signed on behalf of the FRCC by such person or persons as the Board shall from time to time designate.

## ARTICLE VII

### Amendments

**Section 7.1 Amendments.** Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership, subject to the provisions of Section 1.2, and subject to the requirements for approval by NERC and the Federal Energy Regulatory Commission applicable to the FRCC as a Regional Entity, these Bylaws may be amended, altered, or repealed through the following procedure:

(a) Any Voting Member or Director may suggest amendments to these Bylaws. Such suggestions must include a proposed amendment, and any necessary supporting documents. They should be sent to the CEO of FRCC for placement on the agenda for a Board meeting in the time and manner prescribed by the Board.

(b) If the proposal is approved by the Board of Directors, the Board shall place the proposal on the agenda of either the next Annual Meeting of the Voting Members, or pursuant to Board discretion, at a Special Meeting of the Voting Members called for that purpose.

(c) Voting Members shall vote to enact the Board-approved amendment in accordance with Sections 2.5 and 2.6, and subject to the provisions of Section 1.2 of the Bylaws.

**Section 7.2 Review of Governance.** The Board shall appoint a task force to review these Bylaws, and to submit recommendations to the Board on necessary amendments, at the discretion of the Board or if any of the following events occurs. Such task force shall include representation from each Sector.

(a) The number of Voting Members in a Sector is not greater than one (1).

(b) A Regional Transmission Organization of any type is approved by the Federal Energy Regulatory Commission to operate in the FRCC Region.

(c) Any federal or state legislation or regulatory action that significantly alters the functions of the FRCC.

(d) Any new entity that has or is expected to have financial transactions in the wholesale electric market in the FRCC Region wishes to join the FRCC, and does not otherwise meet the membership requirements as then defined in these Bylaws.

## ARTICLE VIII

### Observers of the Board

**Section 8.1 Observers of the Board.** The Chairman of the Florida Public Service Commission, or designee, shall be invited to attend meetings of the Board. The Board shall invite other observers as the Board deems appropriate.

## ARTICLE IX

### Audit

**Section 9.1 Audit.** The Board shall engage a certified public accounting firm to audit the books and accounts of the FRCC for each fiscal year.

## ARTICLE X

### Miscellaneous Provisions

**Section 10.1 Headings.** The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

**Section 10.2 Number and Gender.** All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.

**Section 10.3 Parties Bound.** These Bylaws will bind and inure to the benefit of any Members, Director, Member representative, agent, officer, or employee of the FRCC and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

**Section 10.4 Minority Positions.** Any Voting Member or Standing Committee Representative who has a minority opinion on any significant issue may present the minority opinion to the Board in a manner as prescribed by the Board.

Amended: June 27, 2008

**APPENDIX A**

**Voting Member Agreement - Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Voting Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Voting Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Affiliate Member Agreement – Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Affiliate Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Affiliate Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_  
(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Adjunct Member Agreement – \_\_\_\_\_ Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Adjunct Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Adjunct Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

## **HISTORY OF REVISIONS**

**January, 1998**

**Amended December 19, 2001**

**Amended March 2, 2006**

**Amended September 25, 2007**

**Amended June 27, 2008**



## Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

### COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA [add reference to any applicable authorities in Canada and Mexico]. No regional reliability standard shall be effective within the [Regional Entity Name] area unless filed by NERC with FERC [and applicable authorities in Canada and Mexico] and approved by FERC [and applicable authorities in Canada and Mexico].

### COMMON ATTRIBUTE 2

[Regional Entity Name] regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A [Regional Entity Name] reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

### COMMON ATTRIBUTE 3

[Regional Entity Name] regional reliability standards, when approved by FERC [add applicable authorities in Canada], shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the [Regional Entity Name] area, regardless of membership in the region.

### COMMON ATTRIBUTE 4

**Requester** — The requester is the sponsor of the regional reliability standard request and may assist in the development of the standard. Any member of [Regional Entity Name], or group within [Regional Entity Name] shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the [Regional Entity Name] area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

## **COMMON ATTRIBUTE 5**

**[Standards or other named] committee** — The [Regional Entity Name] [standards] committee manages the standards development process. The [standards] committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the [Regional Entity Name] board on standards presented for adoption.

## **COMMON ATTRIBUTE 6**

*[Alternative 6A: For a Regional Entity that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee is a balanced stakeholder committee, inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system. [The [standards] committee votes to approve standards.] See Appendix A for the representation model of the [standards] committee.

*[Alternative 6B: For a Regional Entity that chooses to vote using a balanced ballot body of stakeholders.]*

**[Registered ballot body]** — The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with [Regional Entity Name] as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

## **COMMON ATTRIBUTE 7**

[Regional Entity Name] will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the [Regional Entity Name] and NERC websites.

## **COMMON ATTRIBUTE 8**

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.

### **COMMON ATTRIBUTE 9**

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

### **COMMON ATTRIBUTE 10**

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

### **COMMON ATTRIBUTE 11**

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the [Regional Entity Name] website within [no greater than 30] days of acceptance by the committee.

### **COMMON ATTRIBUTE 12**

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

### **COMMON ATTRIBUTE 13**

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the [Regional Entity Name] website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to [Regional Entity Name] stakeholders and other potentially interested entities, both within and outside of the [Regional Entity Name] area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

### **COMMON ATTRIBUTE 14**

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the [Regional Entity Name] website no later than the next posting of the proposed standard.

### **COMMON ATTRIBUTE 15**

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

### **COMMON ATTRIBUTE 16**

The standards process manager shall schedule a vote by the [Regional Entity Name] [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

### **COMMON ATTRIBUTE 17**

*[Alternative 17A: For an RE that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards]

committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

[Alternative 17B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

The [Regional Entity Name] registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

### **COMMON ATTRIBUTE 18**

[Alternative 18A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard.

[Alternative 18B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

All members of [Regional Entity Name] are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

### **COMMON ATTRIBUTE 19**

[Alternative 19A: For an RE that chooses to vote using a balanced stakeholder committee.]

Actions by the committee shall be recorded in the regular minutes of the committee.

[Alternative 19B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

### **COMMON ATTRIBUTE 20**

Under no circumstances may the board substantively modify the proposed regional reliability standard.

### COMMON ATTRIBUTE 21

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada and Mexico.]

### COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the [Regional Entity Name] bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in [Regional Entity Name], and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the [Regional Entity Name] members and others.

### COMMON ATTRIBUTE 23

- **Balanced** - The [Regional Entity Name] standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

### COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the [Regional Entity Name] area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

### COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

### **COMMON ATTRIBUTE 26**

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

### **COMMON ATTRIBUTE 27**

- Does not unnecessarily delay development of the proposed reliability standard.

### **COMMON ATTRIBUTE 28**

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

### **COMMON ATTRIBUTE 29**

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

### **COMMON ATTRIBUTE 30**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

### **COMMON ATTRIBUTE 31**

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

### **COMMON ATTRIBUTE 32**

<b>Applicability</b>	<p>Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.</p> <p>If not applicable to the entire [Regional Entity Name] area, then a clear identification of the portion of the bulk power system to which the standard applies.</p> <p>Any limitation on the applicability of the standard based on electric facility requirements should be described.</p>
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### **COMMON ATTRIBUTE 33**

<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
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### **COMMON ATTRIBUTE 34**

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"><li>• The specific data or information that is required to measure performance or outcomes.</li><li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li><li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li><li>• The entity that is responsible for evaluating data or</li></ul>
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	<p>information to assess performance or outcomes.</p> <ul style="list-style-type: none"><li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li><li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li><li>• Violation severity levels.</li></ul>
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EXHIBIT C  
TO PRO FORMA DELEGATION AGREEMENT

**FRCC REGIONAL RELIABILITY STANDARD  
DEVELOPMENT PROCESS**

*Amended September 25, 2007*



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# I. Introduction and Background

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## *Purpose*

This manual establishes the process for development, revision, withdrawal and approval of FRCC Regional Reliability Standards for the FRCC Region. FRCC Regional Reliability Standards apply to the reliability planning and reliable operation of the Bulk Power System in the FRCC Region. Proposed FRCC Regional Reliability Standards shall be subject to approval by the North American Electric Reliability Corporation (NERC), as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the Federal Power Act. FRCC Regional Reliability Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators and users within the FRCC Region, regardless of membership in the region.

The FRCC Regional Reliability Standards Development Process is based on providing an open and fair process that ensures all interested and affected parties have an opportunity to participate in the development of FRCC Regional Reliability Standards. Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the reliability of the FRCC Bulk Power System has a right to participate by: a) expressing a position and its basis, b) having that position considered, c) voting on and d) having the right to appeal.

## *FRCC Regional Reliability Standard Principles*

FRCC Regional Reliability Standards go beyond, add detail to, or implement NERC Reliability Standards, or cover matters not addressed in NERC Reliability Standards. FRCC Regional Reliability Standards shall not be inconsistent with or less stringent than NERC Reliability Standards.

FRCC Regional Reliability Standards are based on NERC's Reliability Principles and Market Interface Principles. Each FRCC Regional Reliability Standard shall enable or support one or more of NERC's Reliability Principles and must accommodate competitive electricity markets by being consistent with NERC's Market Interface Principles.

The FRCC Regional Reliability Standard Development Process defines the fair and open process for development, revision, withdrawal and approval of FRCC Regional Reliability Standards for the FRCC Region and has the following characteristics:

- **Due Process** – Any interested party, or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System has a right to participate in this process as indicated in this manual.
- **Openness** – Participation is open to any interested party or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System. Participation shall not be conditional upon membership in the FRCC. All FRCC Regional Reliability Standard development meetings will be open and noticed on the FRCC website.

- **Balance** – The FRCC Regional Reliability Standard Development Process shall have a balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

## II. FRCC Regional Reliability Standard Definition, Characteristics, and Elements

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### *Definition*

A FRCC Regional Reliability Standard defines certain obligations or requirements of all owners, operators and users of the FRCC Bulk Power System regardless of membership in the FRCC. The obligations or requirements must be material to reliability and measurable. Each obligation and requirement shall support one or more of the NERC reliability principles and shall be consistent with all of the NERC reliability and market interface principles.

FRCC Regional Reliability Standards go beyond, add detail to, or implement NERC reliability standards, or cover matters not addressed in NERC reliability standards. FRCC Regional Reliability Standards shall not be inconsistent with or less stringent than NERC reliability standards.

### *Characteristics*

A FRCC Regional Reliability Standard shall have the following characteristics:

- **Material to Reliability** - A FRCC Regional Reliability Standard shall be material to the reliability of the FRCC Bulk Power System. If the reliability of the FRCC Bulk Power System could be compromised without a particular standard or by a failure to comply with that standard, then the standard is material to reliability.
- **Measurable** - A FRCC Regional Reliability Standard shall establish technical or performance requirements that can be practically measured.
- **Relative to NERC Reliability Standards** - A FRCC Regional Reliability Standard must go beyond, add detail to, or implement NERC reliability standards, or cover matters not addressed in NERC reliability standards.

Although FRCC Regional Reliability Standards have a common format and process, several types of Reliability Standards may exist, each with a different approach to measurement:

- **Technical standards** related to the provision, maintenance, operation, or state of Bulk Power System will likely contain measures of physical parameters and will often be technical in nature.
- **Performance standards** related to the actions of entities providing for or impacting the reliability of the FRCC Bulk Power System will likely contain measures of the results of such actions, or the nature of the performance of such actions.
- **Preparedness standards** related to the actions of entities to be prepared for conditions that are unlikely to occur but are critical to reliability will likely contain measures of such preparations or the state of preparedness.

## *Elements*

A FRCC Regional Reliability Standard shall consist of the elements identified in this section of this manual. These elements are intended to apply a systematic discipline in the development and revision of Reliability Standards. The format allows a clear statement of the purpose, requirements, measures, and compliance elements associated with each Reliability Standard. Supporting documents to aid in the implementation of a Reliability Standard may be referenced by the Reliability Standard but are not part of the Reliability Standard itself.

### Performance Elements of a FRCC Regional Reliability Standard

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference.
<b>Title</b>	A brief, descriptive phrase identifying the topic of the Reliability Standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.  If not applicable to the entire FRCC, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
<b>Effective Date and Status</b>	The effective date of the Reliability Standard or, the proposed effective date.
<b>Purpose</b>	The purpose of the Reliability Standard. The purpose shall explicitly state what outcome will be achieved or is expected by this Reliability Standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory. Any additional comments or statements for which compliance is not mandatory, such as background or explanatory information should be placed in a separate document and referenced.
<b>Risk Factor(s)</b>	The potential reliability significance of each requirement, designated as a High, Medium or Lower Risk Factor in accordance with the criteria listed below:  A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor and control the FRCC Bulk Power System; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative



	<p>conditions anticipated by the preparations, be expected to affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor, control, or restore the FRCC Bulk Power System.</p> <p>A Medium Risk Factor requirement (a) is one that, if violated, could directly affect the electrical state or the capability of the FRCC Bulk Power System but is unlikely to lead to FRCC Bulk Power System instability, separation, or cascading failures; or (b) is a requirement in the planning time frame that , if violated, could under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor and control the FRCC Bulk Power System but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to FRCC Bulk Power System instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to FRCC Bulk Power System instability, separation, or a cascading sequence of failures, or could place the FRCC Bulk Power System at an unacceptable risk of instability, separation, or cascading failures, or (b) is a requirement in a planning time frame that, if violated, could under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to FRCC Bulk Power System instability, separation, or a cascading sequence of failures, or could place the FRCC Bulk Power System at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.</p>
<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measures. Measures that will be used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure identifies to whom the measure applies and the expected level of performance or outcomes required to demonstrate compliance. Each measure shall be tangible, practical, and as objective as is practical. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
<b>Compliance Monitoring Process</b>	<p>The compliance elements define:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible to provide the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> </ul>

	<ul style="list-style-type: none"> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> </ul>
<p><b>Violation Severity Levels</b></p>	<p>Defines the degree to which compliance with a requirement was not achieved. The violation severity levels, are part of the standard and are approved with the standard.</p>

### **III. Roles in the FRCC Regional Reliability Standard Development Process**

#### ***Nomination, Modification, or Withdrawal of A Regional Standard***

Any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, shall be allowed to request that a FRCC Regional Reliability Standard be developed, modified, or withdrawn. Additionally, any interested party or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System shall be allowed to request that a FRCC Regional Reliability Standard be developed, modified, or withdrawn.

#### ***Standard Development Process Roles***

**FRCC Board of Directors** – The FRCC Board of Directors shall consider for adoption as FRCC Regional Reliability Standards, those Standards that have been developed and approved by this process. Once the Board adopts a FRCC Regional Reliability Standard, such Standard shall be submitted to NERC for approval. When approved by NERC, it will be submitted to FERC for approval.

**Registered Ballot Body (RBB)** – The registered ballot body votes to approve FRCC Regional Reliability Standards. The RBB comprises all entities or persons that qualify for one of the FRCC Industry Sectors as defined in Section 1.2 of the FRCC Bylaws, and are registered with FRCC as potential ballot participants in the voting on standards. FRCC membership is not a requirement to participate in the development of and voting on FRCC Regional Reliability Standards. Any entity or person that has a material interest in the reliability of the FRCC Bulk Power System shall be allowed to register as potential ballot participants in the RBB. (See Appendix C)

**Ballot Pool (BP)** – Each standard action has its own BP formed of interested members of the RBB. The BP comprises those members of the RBB that respond to a pre-ballot survey for that particular standard that indicates their desire to participate in the ballot of that standard. The BP will vote to approve each FRCC Regional Reliability Standard.

**FRCC Operating Committee (OC) and FRCC Planning Committee (PC)** – The FRCC OC and the FRCC PC (both of which are balanced stakeholder committees, see Appendix C) shall have the primary responsibility for the development, modification or withdrawal of FRCC Regional Reliability Standards.

**FRCC Standards Process Manager** – The FRCC Regional Reliability Standard Development Process shall be administered by the FRCC Standards Process Manager. The FRCC Standards Process Manager will ensure the integrity of the process and the consistency of quality and completeness of the FRCC Regional Reliability Standards. The FRCC Standards Process Manager will facilitate all steps in this process, and will coordinate with NERC to ensure required information is posted on both NERC and FRCC websites.

**Standard Drafting Team** – A team of technical experts, such as FRCC Subcommittees, Working Groups, Task Forces, or the FRCC Staff, will be appointed by the FRCC OC and/or PC, that will:

- Develop the details of the FRCC Regional Reliability Standard,
- Consider and respond to industry comments,
- Participate in forums to help build consensus on draft FRCC Regional Reliability Standards,
- Assist in the implementation of approved FRCC Regional Reliability Standards,
- Provide technical oversight in response to changing industry conditions,
- Assist in the identification of the need for new FRCC Regional Reliability Standards.

**FRCC Compliance Staff** – The FRCC compliance staff provides input and comments during the standard development process to ensure the requirements are not ambiguous, that measures will be effective and that the compliance elements of a standard can be practically implemented.

## **IV. Steps in Developing a FRCC Regional Reliability Standard**

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### **Step 1 – Request a new FRCC Regional Reliability Standard or modification to, or withdrawal of an existing FRCC Regional Reliability Standard**

A request to develop, modify or withdraw a FRCC Regional Reliability Standard shall be submitted to the FRCC Standards Process Manager (via email to FRCCStandard@frcc.com) by any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, or any interested party or any entity that is directly and materially affected by reliability of the FRCC Bulk Power System. The FRCC Standards Process Manager will acknowledge receipt of the request within fifteen (15) calendar days of its receipt.

### **Step 2 – Assignment of FRCC Regional Reliability Standard Request**

The FRCC Standards Process Manager will assign the request to the FRCC OC, the FRCC PC, or both as appropriate.

### **Step 3 – Posting of FRCC Regional Reliability Standard Request**

The request for standard development, modification or withdrawal will be posted for notification and comment on the FRCC public website for a period of fifteen (15) calendar days, and will be reviewed by the FRCC OC and/or PC. A notice of the posting for comment will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek input on the proposed request.

### **Step 4 – Acceptance of a FRCC Regional Reliability Standard Request**

The FRCC OC and/or the PC will review the request and any comments submitted to determine if the request received will be accepted or rejected within sixty (60) days of its submission. The decision will be posted and, if accepted, the OC and/or the PC will assign and direct a Standard Drafting Team to develop the draft Regional Reliability Standard. If the request is rejected, the FRCC Standards Process Manager will send notification to the entity making the request and to all entities that received the notice in Step 3 above.

### **Step 5 – Drafting and Posting of a FRCC Regional Reliability Standard**

The FRCC OC and/or PC will assign a Standard Drafting Team, within 60 days of acceptance of the request, to develop, in a timely manner, a draft FRCC Regional Reliability Standard that will address the accepted request. The FRCC OC and/or PC may provide a timeframe that is desired for completion of the standard development.

Under the direction of the FRCC OC and/or PC, the Standard Drafting Team, will consider all comments received on the posting of the standard request and will develop a draft FRCC Regional Reliability Standard and corresponding implementation plan.

The draft FRCC Regional Reliability Standard, implementation plan and any supporting documents shall be posted for comments on the FRCC public website for a period of fifteen (15) calendar days, or such longer period as determined by the drafting team or as directed by the FRCC OC and/or the PC. Notice of the posting will go out to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public

Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek comments.

Comments shall be submitted (via email) to the FRCC Standards Process Manager (FRCCStandard@frcc.com). All comments are due by the close of business on the 15<sup>th</sup> calendar day of posting, or such later date as determined by the drafting team or as directed by the FRCC OC and/or PC. If the comment due date falls on a weekend or nationally recognized holiday, the comments shall be due by the close of business on the next regularly scheduled business day.

### **Step 6 – Standards Drafting Team Review of Comments**

All comments should be submitted electronically to the FRCC Standards Process Manager who will forward to the Standard Drafting Team for consideration. All timely comments will be considered.

Under the direction given by the FRCC OC and/or the PC, the Standard Drafting Team will review the comments received and revise the draft FRCC Regional Reliability Standard and/or implementation plan as needed. The Standard Drafting Team will develop written responses to each comment received.

All responses to the submitted comments will be documented and posted on the FRCC public website. If needed, a second draft of the FRCC Regional Reliability Standard will be posted for another comment period. Such comment period shall be fifteen (15) calendar days, or such longer period as determined by the drafting team or as directed by the FRCC OC and/or PC.

Notice of the posting will go out to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek comments.

Based on comments received to the posting, Step 6 will be repeated as necessary until the Standards Drafting Team believes the draft FRCC Regional Reliability Standard is ready to submit to the Ballot Pool for approval.

### **Step 7 –Establishment of Ballot Pool**

The Standard Drafting Team shall submit the final draft of the proposed FRCC Regional Reliability Standard, along with any minority opinions, and all comments and written responses received during the posting(s), to the FRCC Standards Process Manager. The FRCC Standards Process Manager shall establish a Ballot Pool for standard action at least fifteen (15) calendar days prior to the start of a ballot. A pre-ballot survey will be sent to each entity of the RBB to determine their desire to be placed in the Ballot Pool. Once the ballot period opens, the Ballot Pool will be closed and changes to the Ballot Pool participation will not be allowed.

### **Step 8 – Ballot of the new or revised FRCC Regional Reliability Standard**

The FRCC Standards Process Manager will post the final draft of the standard on the FRCC website at least fifteen (15) calendar days before a ballot can begin. The Ballot Pool shall have a minimum of ten (10) calendar days to vote on a standard. The Ballot Pool may vote to approve or not approve the standard. If approved, the FRCC Standards Process Manager will submit the FRCC Regional Reliability Standard, proposed implementation plan, and any supporting documents to the FRCC Board of Directors for adoption.

If approval by the Ballot Pool is not obtained, the PC and/or OC will determine if the draft standard is to be sent back to the standard drafting team to repeat step 6 to incorporate any comments, or to take no further action.

If no further action is taken, the reason for such will be posted on the FRCC public website. A notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.

### **Step 9 – Adoption of FRCC Regional Reliability Standards by the FRCC Board of Directors**

At a regular or special meeting, the FRCC Board of Directors may consider adoption of the proposed FRCC Regional Reliability Standard that has been approved by the RBB Ballot Pool. A FRCC Regional Reliability Standard submitted for adoption by the FRCC Board of Directors must be posted for notification and comment on the FRCC public website at least ten (10) calendar days prior to action by the FRCC Board of Directors. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator. The FRCC Board of Directors shall consider the comments received, the responses provided, and any dissenting opinions. The FRCC Board of Directors shall adopt or reject a FRCC Regional Reliability Standard as submitted, but may not modify the proposed FRCC Regional Reliability Standard. If the FRCC Board of Directors chooses not to adopt a FRCC Regional Reliability Standard, it shall provide its reasons for not doing so.

If the FRCC Board of Directors chooses not to adopt the proposed FRCC Regional Reliability Standard, the reason for such decision will be posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.

### **Step 10 – Submission to NERC and FERC**

Once the FRCC Regional Reliability Standard is adopted by the FRCC Board of Directors, the FRCC Standard Process Manager shall submit the FRCC Regional Reliability Standard to NERC for approval. When approved by NERC, it shall be submitted by NERC to FERC for approval. If NERC or FERC rejects the FRCC Regional Reliability Standard, the FRCC Board of Directors will determine if the standard is to be sent back to the OC and/or PC to incorporate their comments or to take no further action on the standard. A FRCC Regional Reliability Standard that is adopted by the FRCC Board of Directors, approved by NERC and FERC, shall become effective on a date designated by FERC.

## V. Special Procedures

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### *Urgent Action*

Under certain conditions, the entity making the request or the FRCC OC and/or the PC may designate a proposed or revised FRCC Regional Reliability Standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed or revised FRCC Regional Reliability Standard will materially impact reliability of the Bulk Power System in the FRCC Region. The FRCC OC and/or the PC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a FRCC Regional Reliability Standard.

The entity making the request, or the FRCC OC and/or the PC, will prepare a draft of the proposed FRCC Regional Reliability Standard and submit it to the Standards Process Manager for urgent action. The submission must include a justification for the urgent action. The Standards Process Manager shall immediately post the draft as specified in Step 5. The posting shall be a minimum of ten (10) calendar days before the RBB can consider the draft for approval. All comments received during the posting will be considered. Once approved by the RBB, the proposed urgent FRCC Regional Reliability Standard will be sent to the FRCC Board of Directors for adoption.

A FRCC Regional Reliability Standard that is adopted by the FRCC Board of Directors, as an urgent action shall have a termination date specified that shall not exceed 180 days from the approved date. Should there be a need to make the FRCC Regional Reliability Standard permanent, the replacement FRCC Regional Reliability Standard would be required to go through the full standards development process.

An urgent action FRCC Regional Reliability Standard that expires may be renewed by the FRCC Board of Directors using the urgent action process again, in the event a permanent FRCC Regional Reliability Standard has not been adopted. In determining whether to authorize the extension of an urgent action FRCC Regional Reliability Standard, the FRCC OC and/or the PC shall consider the impact to the reliability of the FRCC Bulk Electric System of not continuing the FRCC Regional Reliability Standard. In addition, consideration will be given to whether expeditious progress is being made toward a permanent replacement.

The FRCC OC and/or the PC shall not request the FRCC Board of Directors to extend an urgent action FRCC Regional Reliability Standard if there is insufficient progress toward adopting a permanent replacement FRCC Regional Standard or if the FRCC OC and/or the PC lack confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action FRCC Regional Reliability Standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement FRCC Regional Reliability Standard. With these principles, there is no pre-determined limit on the number of times an urgent action may be renewed. However, each urgent action FRCC Regional Reliability Standard renewal shall be effective only upon adoption by the FRCC Board of Directors, and approval by NERC and FERC.



## ***Interpretations of Standards***

Any member of the FRCC, or group within the FRCC, or an entity that is directly and materially affected by reliability of the FRCC Bulk Power System shall be permitted to request an interpretation of a FRCC Regional Reliability Standard. The entity requesting an interpretation shall send a request to the FRCC Standards Process Manager explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party, or others, caused by the lack of clarity or a possible incorrect interpretation of the FRCC Regional Reliability Standard. The FRCC Standards Process Manager will assemble a team with the relevant expertise to address the clarification.

As soon as practical (but not more than thirty (30) calendar days following the receipt of the request), the team will draft a written interpretation of the FRCC Regional Reliability Standard addressing the issues raised. The FRCC Standards Process Manager will submit the written interpretation to the OC and/or PC for review and approval. If approved by the FRCC OC and/or the PC, the interpretation is appended to the FRCC Regional Reliability Standard and is effective immediately. The interpretation will stand until such time as the FRCC Regional Reliability Standard is revised through the normal process, at which time the FRCC Regional Reliability Standard will be modified to incorporate the clarifications provided by the interpretation.

## ***Appeals***

Any member of the FRCC, or group within the FRCC, or any entity that is directly and materially affected by reliability of the FRCC Bulk Power System, and who feel they have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, or withdrawal of a FRCC Regional Reliability Standard shall have the right to appeal. This appeals process applies only to the FRCC Regional Reliability Standards Process as defined in this document

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within thirty (30) calendar days of the date of the action purported to cause the adverse effect. The final decisions of any appeal shall be documented in writing and posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator .

The appeals process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants:

### **Level 1 Appeal**

Level 1 is the required first step in this appeals process. The appellant submits to the FRCC Standards Process Manager a complaint in writing that describes the substantive or procedural action associated with a FRCC Regional Reliability Standard or the FRCC Regional Reliability Standards Process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the FRCC Standards Process Manager shall prepare a written

response addressed to the appellant as soon as practical but not more than forty-five (45) calendar days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the record associated with the FRCC Regional Reliability Standard.

## **Level 2 Appeal**

If after the Level 1 Appeal, the appellant remains unsatisfied with the resolution, notification shall be made in writing to the FRCC Standards Process Manager. Within thirty (30) calendar days of receiving the notification, the FRCC Standards Process Manager shall convene a Level 2 Appeals Panel. This panel shall consist of five members appointed by the FRCC Board of Directors. In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The FRCC Standards Process Manager shall post on the FRCC public website the notice of the Level 2 appeal and other relevant materials. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator. At least fifteen (15) calendar days notice of the meeting of the Level 2 Appeals Panel will be made. In addition to the appellant, any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System, and who is directly and materially affected by the substantive or procedural action referenced in the complaint shall be heard by the panel.

The Level 2 Appeals Panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The Level 2 Appeals Panel may in its decision find for the appellant and remand the issue to the FRCC OC and/or the PC for resolution with a statement of the issues and facts in regard to which fair and equitable action was not taken. The Level 2 Appeals Panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections.

The Level 2 Appeals Panel may not, however, revise, approve, disapprove, or adopt a FRCC Regional Reliability Standard, as these responsibilities remain with the FRCC Board of Directors. The actions of the Level 2 Appeals Panel shall be posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.

## **VI. Maintenance of the FRCC Regional Reliability Standards and Process**

### ***Requests to Revise the FRCC Regional Reliability Standard Development Process***

Any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System may submit a written request to modify the FRCC Regional Reliability Standard Development Process Manual. The FRCC Standards Process Manager shall oversee the handling of the request. The FRCC OC and/or the PC shall review the request and submit recommendations to the FRCC Board of Directors for consideration. The FRCC Board of Directors, on its own motion, may amend the FRCC Regional Reliability Standard Process.

### ***Five-Year Review***

Each FRCC Regional Reliability Standard shall be reviewed at least once every five (5) years. The review date will be determined from the effective date or the latest revision date whichever is later. The review process shall be conducted in accordance with Steps 1 through 10 of the FRCC Regional Reliability Standard Development Process Manual. As a result of this review, a FRCC Regional Reliability Standard shall be reaffirmed, revised, or withdrawn.

### ***Filing of FRCC Regional Standards with Regulatory Agencies***

All adopted FRCC Regional Reliability Standards will be filed with FERC.

APPENDIX A

Email completed form to [FRCCStandard@frcc.com](mailto:FRCCStandard@frcc.com)

**FRCC Regional Reliability Standard Request Form**

Title of Proposed Standard
Request Date

<b>Requestor Information</b>	<b>TYPE</b> (Check a box for each one that applies)
Name	<input type="checkbox"/> New Standard
Primary Contact	<input type="checkbox"/> Revision to existing Standard
Telephone	<input type="checkbox"/> Withdrawal of existing Standard
Fax	
Email	<input type="checkbox"/> Urgent Action

**Purpose** (Describe the purpose of the standard – what the standard will achieve in support of reliability)

**Industry Need** (Provide a detailed statement justifying the need for the proposed standard, along with any supporting documentation)

**Brief Description** (Describe the proposed standard in sufficient detail to clearly define the scope in a manner that can be easily understood by others)

## FRCC Regional Reliability Standard Request Form

**The Standard will Apply to the Following Functions** (Check box for each one that applies)

<input type="checkbox"/>	Reliability Coordinator	Ensures the reliability of the bulk transmission system within its Reliability Authority area.
<input type="checkbox"/>	Balancing Authority	Integrates resource plans ahead of time, and maintains load-interchange-resource balance within its metered boundary and supports system frequency in real time
<input type="checkbox"/>	Planning Authority	Plans the Bulk Electric System
<input type="checkbox"/>	Resource Planner	Develops a long-term plan for the resource adequacy of specific loads within a Planning Authority area
<input type="checkbox"/>	Transmission Planner	Develops a long-term plan for the reliability of transmission systems within its portion of the Planning Authority area
<input type="checkbox"/>	Transmission Service Provider	Provides transmission services to qualified market agreements
<input type="checkbox"/>	Transmission Owner	Owens transmission facilities
<input type="checkbox"/>	Transmission Operator	Operates and maintains the transmission facilities, and executes switching orders
<input type="checkbox"/>	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer
<input type="checkbox"/>	Generator Owner	Owens and maintains generation unit(s)
<input type="checkbox"/>	Generator Operator	Operates generation units(s) and performs the functions of supplying energy and Interconnected Operations Services
<input type="checkbox"/>	Purchasing-Selling Entity	The function of purchasing or selling energy, capacity, and all necessary Interconnected Operations Services as required
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission (and related generation services) to serve the end user

**FRCC Regional Reliability Standard Request Form**

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**NERC Reliability Principles**

<b>Applicable Reliability Principles (Check box for all that apply.)</b>	
	1. Interconnected bulk electric systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
	2. The frequency and voltage of interconnected bulk electric systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
	3. Information necessary for the planning and operation of interconnected bulk electric systems shall be made available to those entities responsible for planning and operating the systems reliably.
	4. Plans for emergency operation and system restoration of interconnected bulk electric systems shall be developed, coordinated, maintained, and implemented.
	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected bulk electric systems.
	6. Personnel responsible for planning and operating interconnected bulk electric systems shall be trained, qualified, and have the responsibility and authority to implement actions.
	7. The security of the interconnected bulk electric systems shall be assessed, monitored, and maintained on a wide-area basis.

**NERC Market Interface Principles**

<b>Does the proposed Standard comply with all of the following Market Interface Principles?</b>	
Recognizing that reliability is an essential requirement of a robust North American economy:	
yes or no	1. A reliability standard shall not give any market participant an unfair competitive advantage.
yes or no	2. A reliability standard shall neither mandate nor prohibit any specific market structure.
yes or no	3. A reliability standard shall not preclude market solutions to achieving compliance with that standard.
yes or no	4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.

**FRCC Regional Reliability Standard Request Form**

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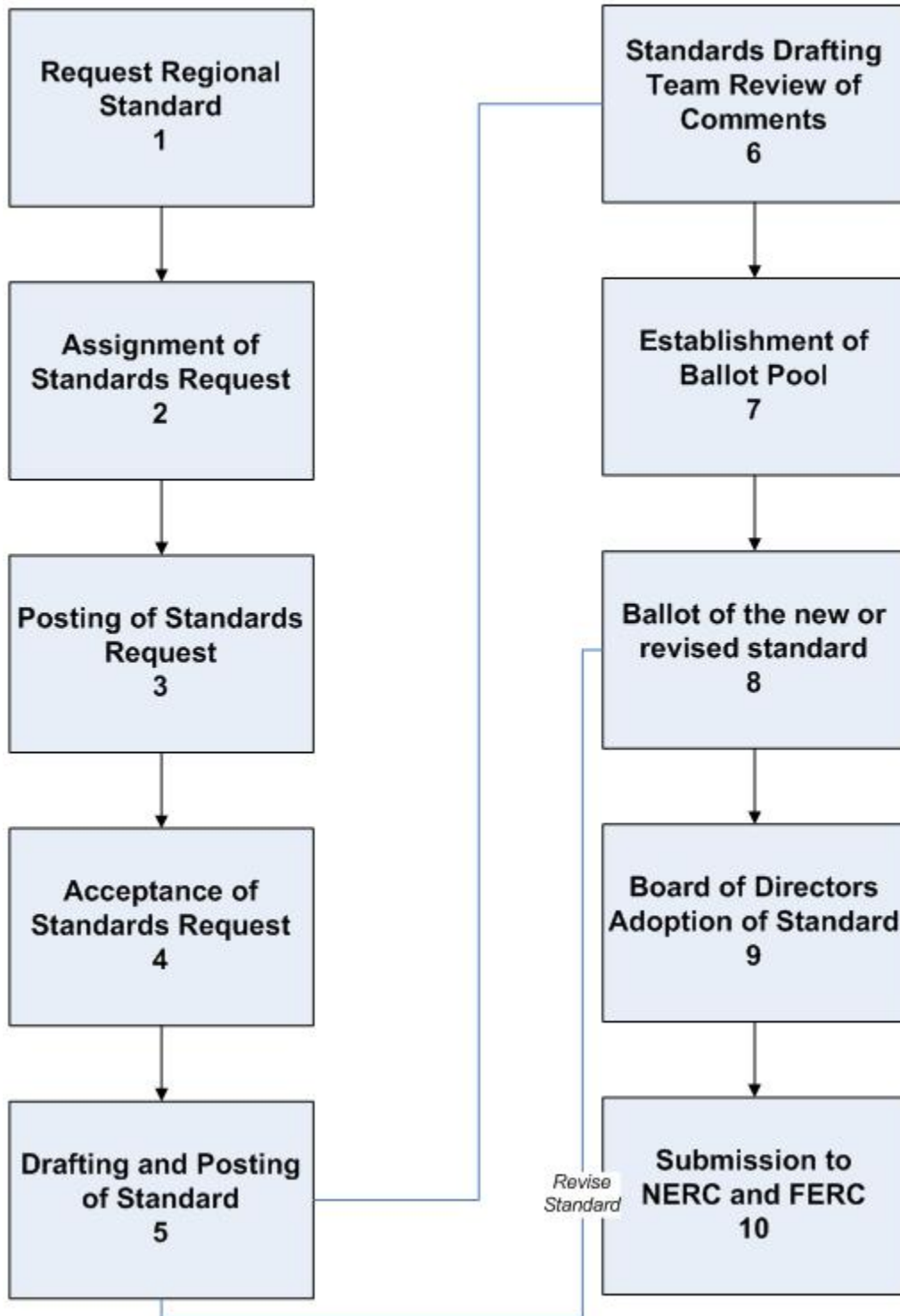
**Related Standards**

<b>Standard No.</b>	<b>Explanation</b>

<p><b>Proposed Implementation</b>                      <b>days after Board of Directors adoption or</b></p> <hr/> <p><b>On (date):</b></p>
--

APPENDIX B

*Process Diagram*





## APPENDIX C

### Development of and Voting of the Registered Ballot Body

#### **1. Registration Procedures**

The Registered Ballot Body (RBB) comprises all entities<sup>1</sup> and persons that:

- Qualify for one of the FRCC Industry Sectors, and
- Are registered with the FRCC as potential ballot participants in the voting on FRCC Regional Reliability Standards.

All registrations will be done electronically. All entities and persons will self-select to belong to the RBB. The sectors shall be identical to those in Section 1.2 of the FRCC Bylaws.

All RBB members will have the ability to vote on a standard. Voting will be done in writing (either email or facsimile) with each RBB member having one vote. The RBB representative will have the right to register and participate in ballot pools to cast their vote on a standard being considered for approval.

#### **2. Sector Qualification Guidelines**

The general guidelines are as follows:

- An entity or person may register in the RBB in any Sector in which it qualifies for provided that an entity or person registers as a potential ballot participant in only one (1) Sector.
- Any individual currently employed by an organization that is eligible to join one or more of the other five (5) sectors, shall not be qualified to join as a General Sector RBB member.

#### **3. Ballot Pool Voting**

A Ballot Pool will be established to vote on any proposed standards action. Each RBB member choosing to belong to a Ballot Pool will have one individual vote. Two-thirds of the individual votes of the Ballot Pool shall constitute a quorum.

Approval of a FRCC Regional Reliability Standard requires the affirmative vote of a two-thirds majority of the weighted sector votes cast. The number of votes cast in each sector is the sum of the affirmative and negative votes, excluding abstentions.

The following steps will be used to determine if there is sufficient affirmative votes:

1. The number of affirmative votes cast in each sector will be divided by the sum of affirmative and negative votes cast to determine the fractional affirmative vote for each sector. Abstentions will not be counted.

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<sup>1</sup> An entity and all of its Affiliates (as defined in the FRCC Bylaws) shall be considered one entity for purposes of registering as a potential ballot participant.

2. The fractional affirmative vote for a sector will then be multiplied by the Sector Weight Factor to determine the weighted fractional affirmative vote for a sector. The Sector Weight Factors are:
  - a. Suppliers Sector: Weight Factor = 2.5
  - b. Non-Investor Owned Utility Wholesale Sector: Weight Factor = 2.0
  - c. Load Serving Entity Sector: Weight Factor = 1.0
  - d. Generating Load Serving Entity Sector: Weight Factor = 3.0
  - e. Investor Owned Utility Sector: Weight Factor = 3.5
  - f. General Sector: Weight Factor = 1.0
3. The sum of the weighted fractional affirmative votes from all sectors divided by the sum of the weights of the sectors voting will be used to determine if a two-thirds majority has been achieved. A sector will be considered as “voting” if any member of the sector in the Ballot Pool casts either an affirmative or negative vote.
4. A FRCC Regional Reliability Standard will be considered “approved” if the sum of the weighted fractional affirmative votes from all sectors divided by the sum of the weights of the voting sectors is two-thirds or greater.

## History of Revisions

Approved March 2, 2006  
Amended July 25, 2006  
Amended October 24, 2006  
Amended September 25, 2007

## **EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

### **1.0 FRCC COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

#### **1.1 Obligations of Florida Reliability Coordinating Council, Inc.**

FRCC will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within FRCC's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

#### **1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program**

The FRCC has "customized" the NERC pro-forma document by changing "Compliance Enforcement Authority" and "Regional Entity" to "FRCC" where appropriate. FRCC has also removed any reference to "Applicable Governmental Authority" since our boundary is fully within the U.S. In addition, the following items are being identified to show where FRCC has provided additional process detail explaining how we will implement the NERC Compliance Monitoring and Enforcement Program. We believe these items add needed detail and clarification and do not constitute "deviations" from NERC's Compliance Monitoring and Enforcement Program.

##### Section 1.1 - Definitions

The FRCC has added a definition for "Business Days". Registered Entities may observe holidays differently than the FRCC. To ensure complete understanding of the term "business day" especially as it relates to the defined term "Required Date", the FRCC has included the following definition:

*1.1.4 Business Days: Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule; New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day.*

The FRCC has included a definition of "Reliability Standard". This was missing and needed clarification:

*1.1.19 Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.*

##### Section 2.0 – Identification of Organization Responsible for complying with Reliability Standards

In the first paragraph, the FRCC removed the word "promptly" and replaced it with "within thirty (30) days" to clarify the time frame for which a Registered Entity is to notify the FRCC with changes in its registration information. Promptly is an ambiguous term and the 30 day

timeframe corresponds with the minimum compliance monitoring period currently identified in NERC's Reliability Standards.

### Section 3.0 – Compliance Monitoring and Enforcement Processes

The FRCC has added a paragraph that identifies the use of our FRCC Compliance Committee in a non-decisional review process. After initial determination of an alleged violation by the FRCC Compliance Staff, and after required notification to NERC and the Registered Entity, the FRCC Compliance Staff may provide their determinations to the FRCC Compliance Committee for a technical review. This review helps provide an increased understanding of how to comply with Reliability Standards. This is especially important for those standard requirements that may lack the clarity necessary to ensure compliance and increased reliability. The results of this technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation. The FRCC believes this process assures an increased understanding of standard requirements by both registered entities and compliance staff; helps build trust and transparency in the process and ultimately results in increased reliability to the bulk power system.

### Section 5.2 – Registered Entity Response

The FRCC has identified that a FRCC Board Compliance Committee will appoint a panel called the Compliance Advisory Panel to work with the Registered Entity to resolve any conflicts within the forty day period each time a Registered Entity contests an alleged violation and sanction and/or penalty. The FRCC believes this process will resolve many disputes, thereby reducing the number of costly and time consuming formal hearings.

The FRCC has added a timeframe of 10 business days for a Registered Entity to request a hearing if the dispute was not resolved in the 40 days working with the Compliance Advisory Panel. This timing was needed to clarify the timeframe for the decision to be made.

### Section 5.6 – Notice of Penalty

The FRCC changed the word “The” to “Any” at the beginning of the 2<sup>nd</sup> paragraph to provide needed clarification. Words were added in the preceding paragraph to clarify that NERC may revise a penalty or sanction that the FRCC submits. The word “The” in the 2<sup>nd</sup> paragraph seemed to refer only to the revised penalty which is incorrect. The 2<sup>nd</sup> paragraph applies to any penalty that is ultimately filed with FERC.

### Attachment 2 – Hearing Procedures

The FRCC accepted the Hearing Procedures developed jointly by the Regional Entities in the Eastern Interconnection. However, we have made some changes to add detail or clarify the document.

### Attachment 2 – Section 1.1.5 Definitions

Throughout Attachment 2 the FRCC has inserted the term “business” before days that are less than fifteen (15) to be consistent with the terminology in the body of the program document

itself. This is supported by the inclusion of the definition of “business days” mentioned above. The FRCC added “and FRCC” to the first paragraph of this section to clarify that both the NERC pro-forma definitions and the FRCC added definitions are included.

#### Attachment 2 – Section 1.2.5 Computation of Time

The FRCC has deleted this section as we believe it to be very confusing. The definition of “business days” and the addition of the term “business” to clarify business days from calendar days eliminate the need for this section. We left it intentionally blank to keep the numbering the same for the rest of the document.

## **2.0 REGIONAL HEARING OF COMPLIANCE MATTERS**

**FRCC** shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be the FRCC Board Compliance Committee (BCC), a balanced compliance panel reporting directly to the FRCC’s Board of Directors.

The BCC will consist of one (1) Voting Member from each of the six (6) sectors in the FRCC, who shall be a member of the Board of Directors. Each year, two (2) members from each Sector of the FRCC Board of Directors will volunteer to serve in a BCC pool. At the time a hearing request is received, the Chair of the FRCC Board of Directors will appoint one member from each Sector to form the BCC for that hearing. The Board Member from the Registered Entity that has requested the hearing will not be selected for that BCC. In the event one (1) Sector of the FRCC declines to participate on the BCC, the Chair of the Board of Directors shall randomly select one (1) additional BCC member from the remaining five (5) Sectors to constitute the BCC. The Chair of the FRCC Board of Directors will appoint a Chair and Vice-Chair of the BCC. Terms of BCC members will be equivalent to the time it takes to complete the hearing for which they were selected. Members may be re-appointed to subsequent terms without any limits to the number of terms they serve.

FRCC Industry Sectors are as follows:

- One (1) Member from the Investor Owned Utility Sector
- One (1) Member from the Suppliers Sector
- One (1) Member from the Non-Investor Owned Utility Wholesale Sector
- One(1) Member from the Load Serving Entity Sector
- One (1) Member from the Generating Load Serving Entity Sector
- One (1) Member from the General Sector

Each member of the BCC shall be a full voting member. There will be no alternates or proxies for the BCC members. Decisions of the BCC shall require (i) a quorum to be present requiring at least fifty (50) percent of the number of members assigned to the BCC and (ii) a majority vote of the members of the BCC voting on the decision.

### **3.0 OTHER DECISION-MAKING BODIES**

The FRCC has engaged NERC to oversee the compliance monitoring and enforcement responsibility as related to FRCC's compliance with Reliability Standard requirements that are applicable to the functions for which FRCC is a Registered Entity.



**Florida Reliability Coordinating Council**  
**Compliance Monitoring and Enforcement Program**  
**Amended July 21, 2008**



# Compliance Monitoring and Enforcement Program

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

### ATTACHMENT 2 – HEARING PROCEDURES

## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Florida Reliability Coordinating Council (“FRCC”) to monitor, assess, and enforce compliance with Reliability Standards within the FRCC Region<sup>1</sup>. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

#### 1.1 Definitions

- 1.1.1** Alleged Violation: A potential violation for which the FRCC has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2** Annual Audit Plan: A plan developed annually by the FRCC that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3** Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4** Business Days: Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule. New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve and Christmas Day.
- 1.1.5** Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.6** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.7** Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.

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<sup>1</sup> The FRCC Region is peninsular Florida east of the Apalachicola River

## Compliance Monitoring and Enforcement Program

- 1.1.8** Compliance Enforcement Authority: NERC or the FRCC in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.9** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.10** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by the FRCC or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.
- 1.1.11** Exception Reporting: Information provided to the FRCC by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.12** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including FRCC decision, Settlement Agreement, or otherwise.
- 1.1.13** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.14** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the FRCC in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.15** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the FRCC on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.16** FRCC Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of

## Compliance Monitoring and Enforcement Program

compliance within the FRCC's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.

- 1.1.17** FRCC Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the FRCC, (3) the methods to be used by the FRCC for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the FRCC's Annual Audit Plan.
- 1.1.18** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.19** Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.
- 1.1.20** Remedial Action Directive: An action (other than a penalty or sanction) required by the FRCC that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.21** Required Date: The date given a Registered Entity in a notice from the FRCC by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.22** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the FRCC and that are included for monitoring in the FRCC Implementation Plan.
- 1.1.23** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.

## **Compliance Monitoring and Enforcement Program**

**1.1.24 Spot Checking:** A process in which the FRCC requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

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

The FRCC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. Each Registered Entity shall inform the FRCC within thirty (30) days of changes to its registration information. The FRCC shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The FRCC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

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

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

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject of 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.

### **3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES**

## Compliance Monitoring and Enforcement Program

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

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

The FRCC Compliance Staff may provide the determination of an alleged violation to the FRCC Compliance Committee (CC) for a non-decisional technical review. This technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation.

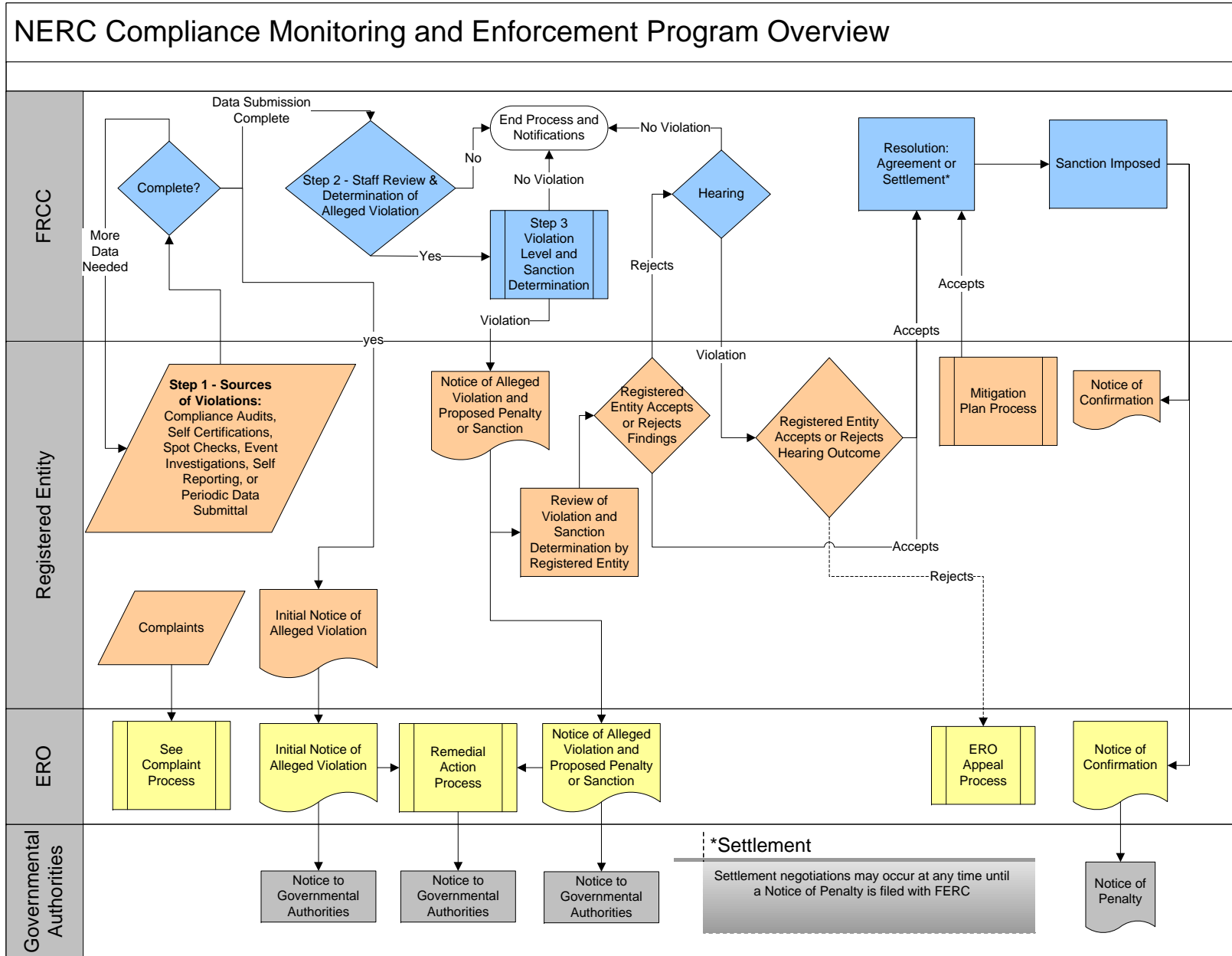
The Compliance Program requires timely data from Registered Entities to effectively monitor compliance with Reliability Standards. If data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the FRCC may execute the steps described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

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

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

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

**Compliance Monitoring and Enforcement Program**  
**Figure 3.0 – Compliance Monitoring and Enforcement Program Overview**



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

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

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**.<sup>2</sup>

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

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<sup>2</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

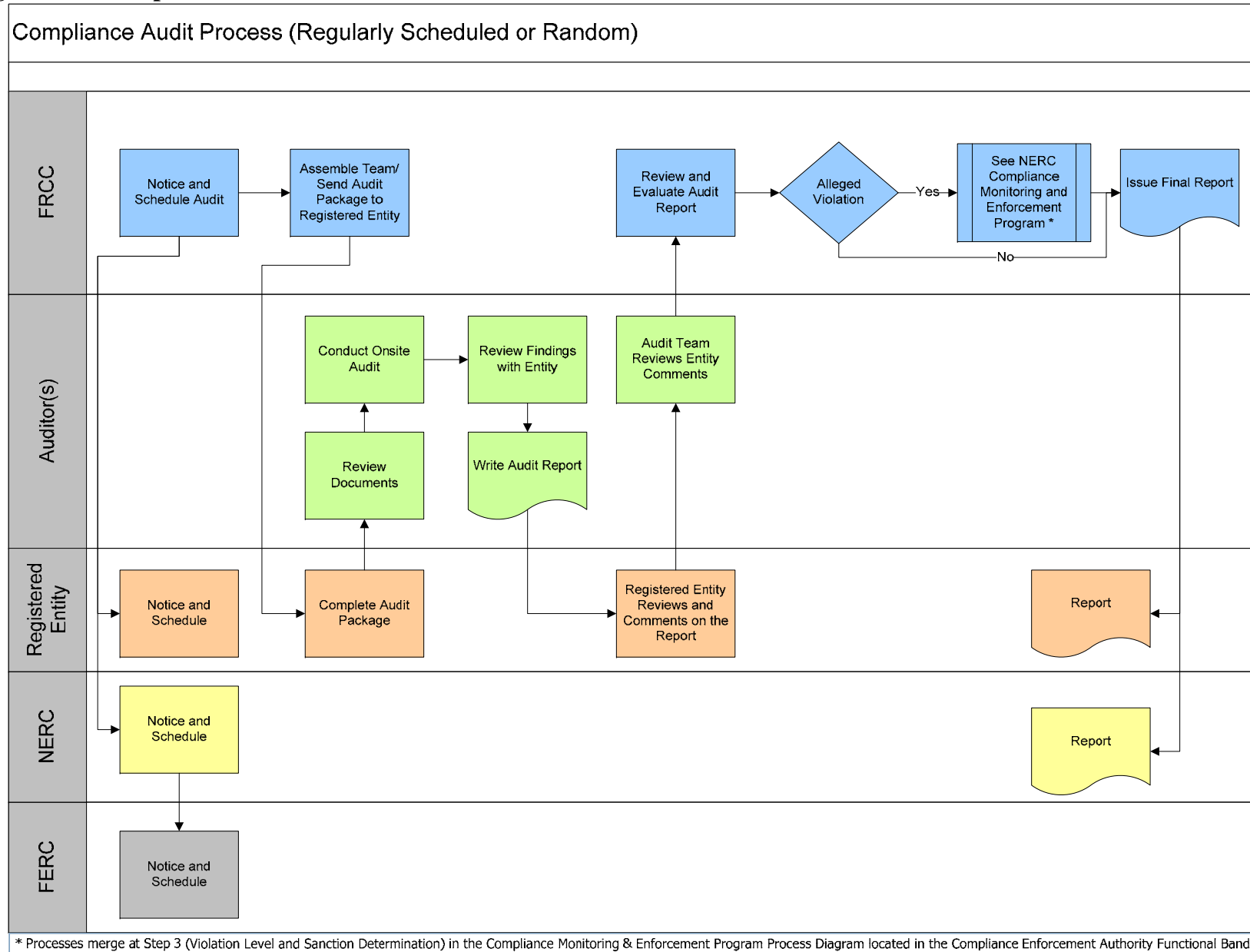


## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

## Figure 3.1 – Compliance Audit Process



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 FRCC Annual Audit Plan and Schedule**

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

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

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

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

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

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

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

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

The audit team shall be comprised of staff personnel from the FRCC and may include contractors and industry volunteers as determined by the FRCC to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from the FRCC and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any FRCC Compliance Audit team either as an observer or as an audit team member as determined by the FRCC. Additionally, FERC and

## **Compliance Monitoring and Enforcement Program**

other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

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

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

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

### **3.1.6 Compliance Audit Reports**

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the FRCC who will review the report and assess compliance with

## Compliance Monitoring and Enforcement Program

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

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

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

### 3.2 Self-Certification

The FRCC may require Registered Entities to self-certify their compliance with Reliability Standards.

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

#### 3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**.<sup>3</sup>

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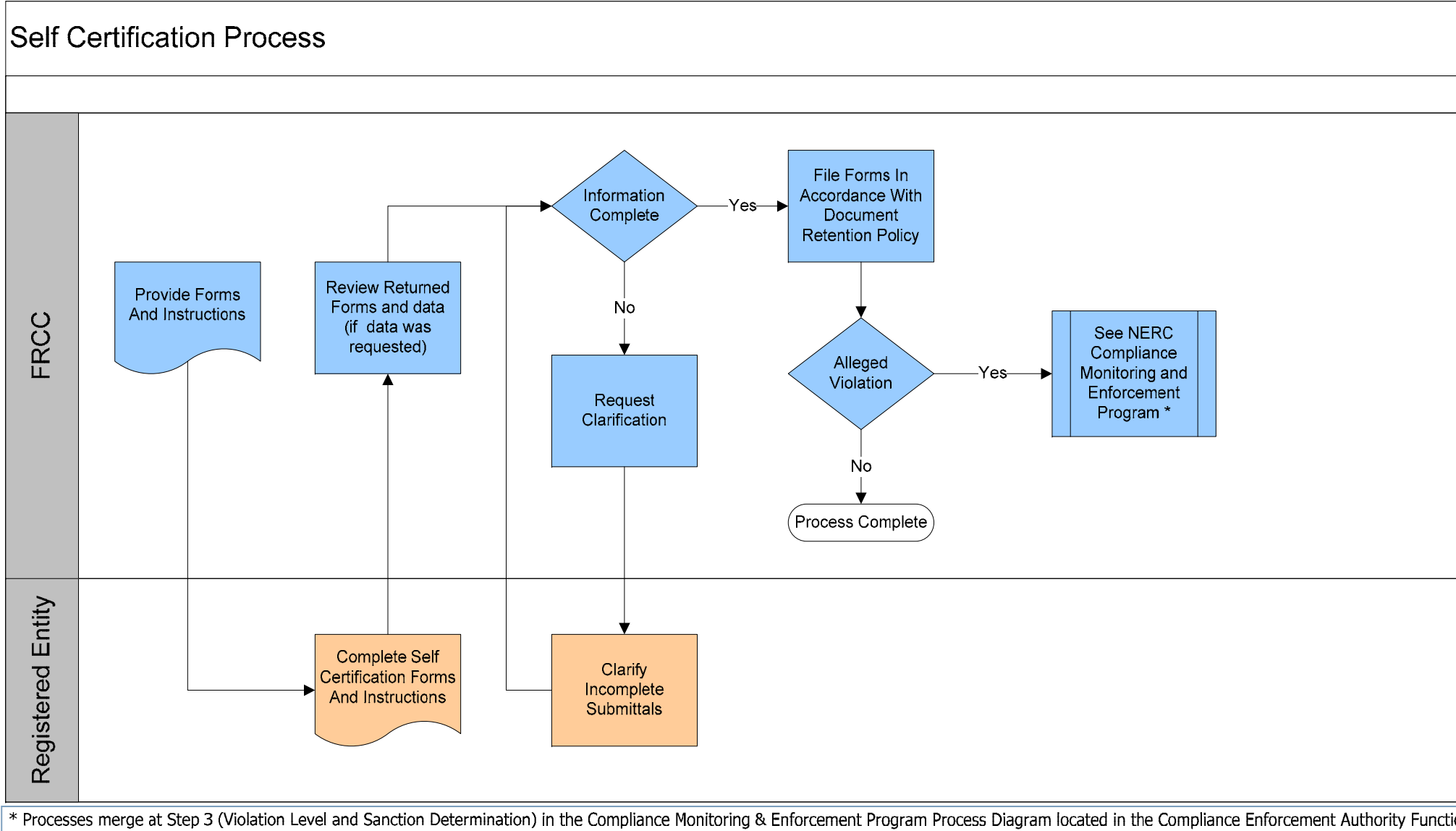
<sup>3</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the FRCC's receipt of data.

## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



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

## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

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

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1**:<sup>4</sup>

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

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<sup>4</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the FRCC's receipt of data.

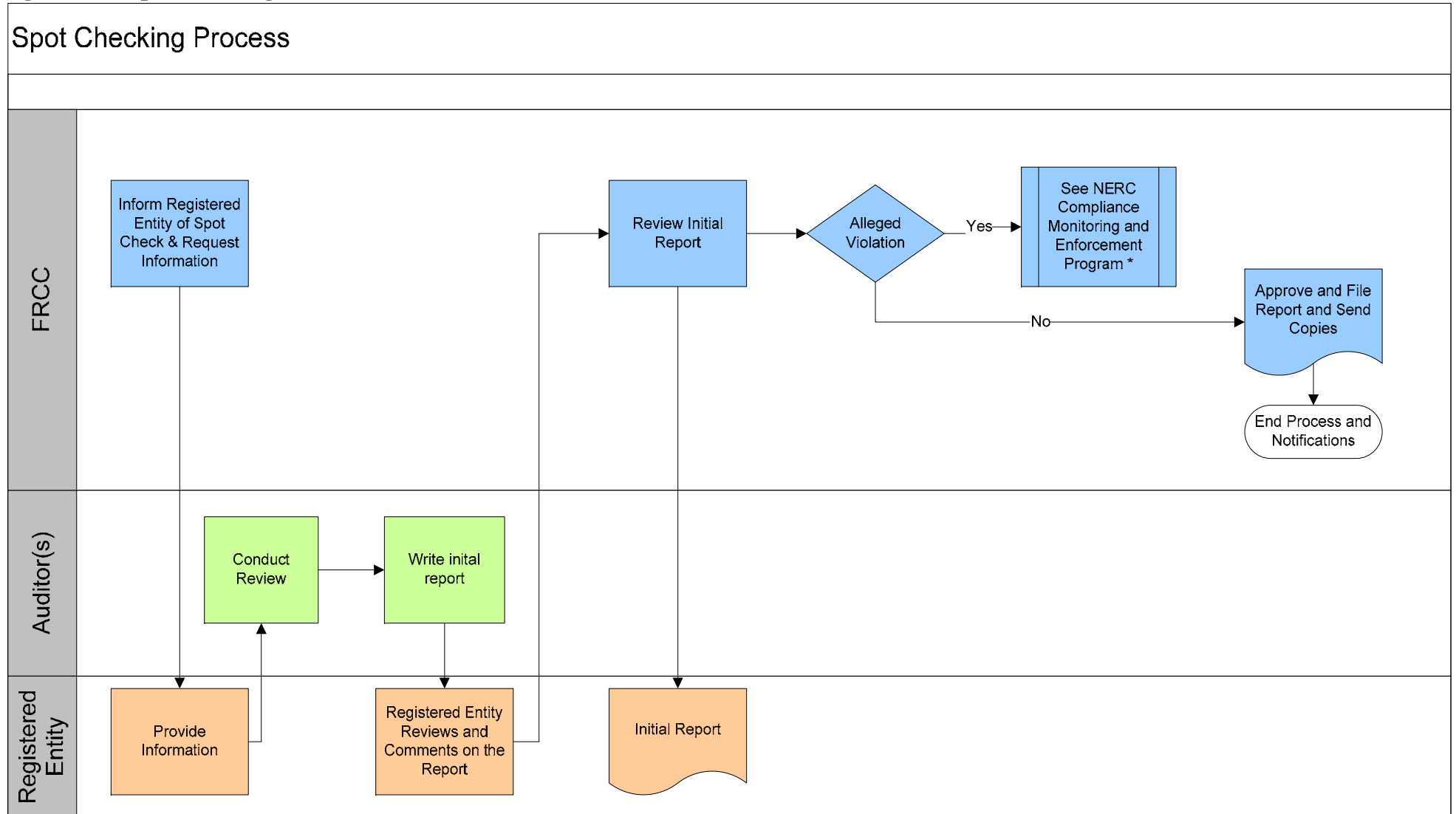


## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



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

## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

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

Compliance Violation Investigations will generally be led by the FRCC's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>5</sup> The FRCC shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

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

If an Applicable Governmental Authority other than FERC initiates a Compliance Violation Investigation of a U.S.-related matter, NERC shall provide notice to FERC of the Compliance Violation Investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates a Compliance Violation Investigation of a non-U.S.-related matter, NERC shall provide notice of the Compliance Violation Investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the Compliance Violation Investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

#### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:<sup>6</sup>

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<sup>5</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate investigations into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the FRCC or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the FRCC determines it cannot conduct the Compliance Violation Investigation.

<sup>6</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

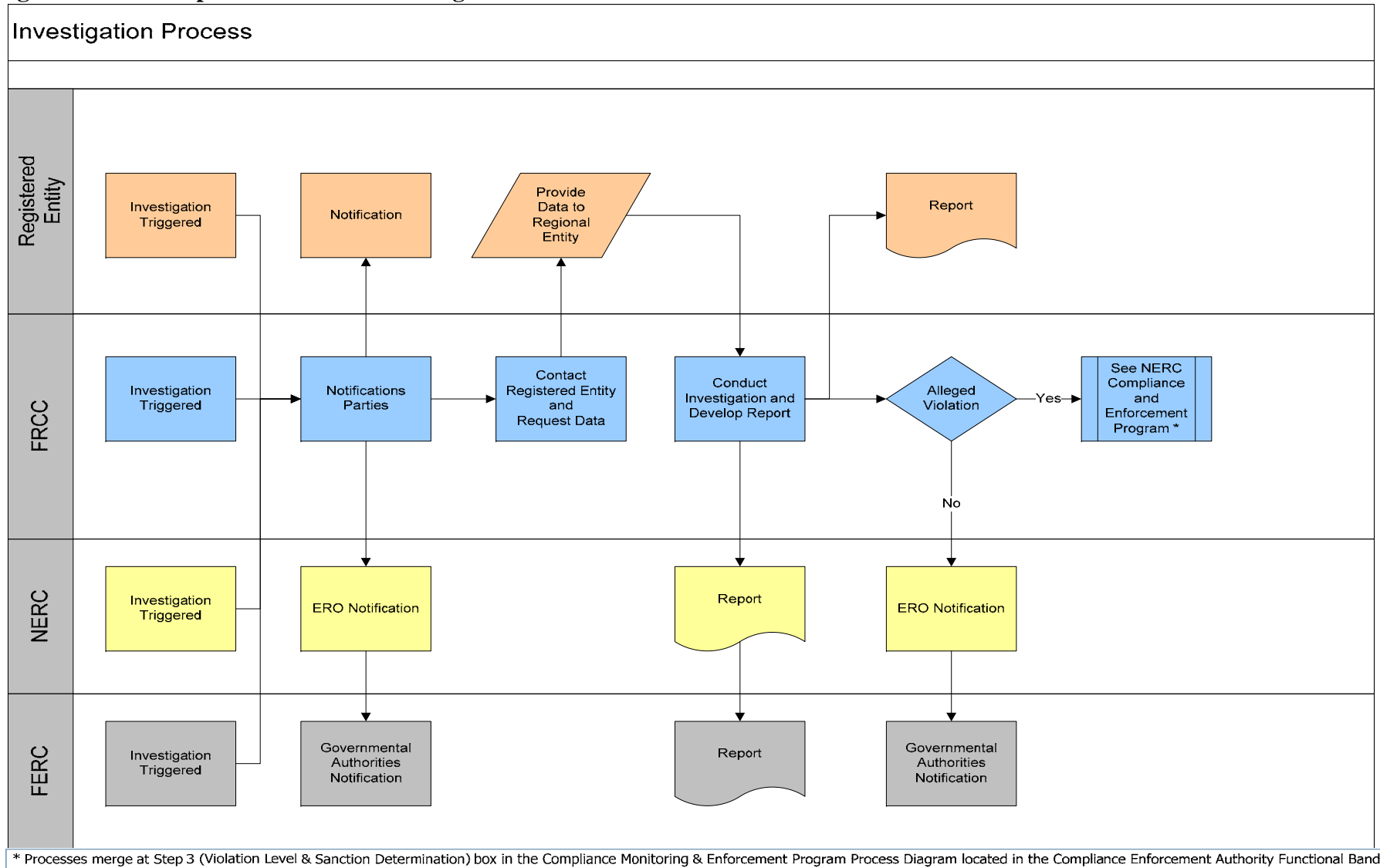
- The FRCC is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the FRCC: (i) notifies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

## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

**Figure 3.4.1 – Compliance Violation Investigation Process**



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

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

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>7</sup>

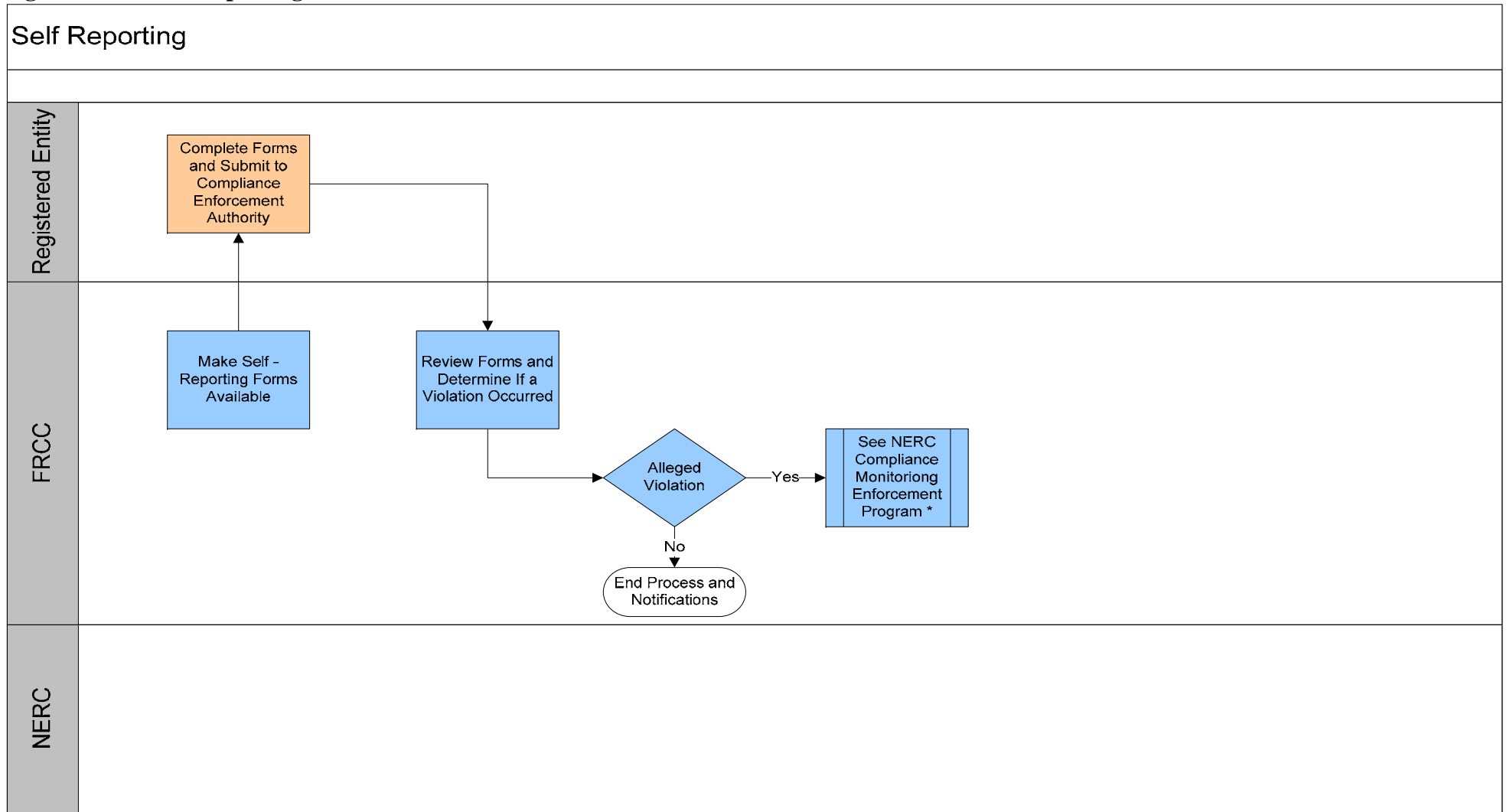
- The FRCC posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the FRCC.
- The FRCC reviews the information to determine compliance with the Reliability Standards and may request the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

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<sup>7</sup>This process normally completes within sixty (60) days following the FRCC's receipt of data.  
Revised for July 21, 2008 Compliance Filing

# Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process



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



## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

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

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>8</sup>

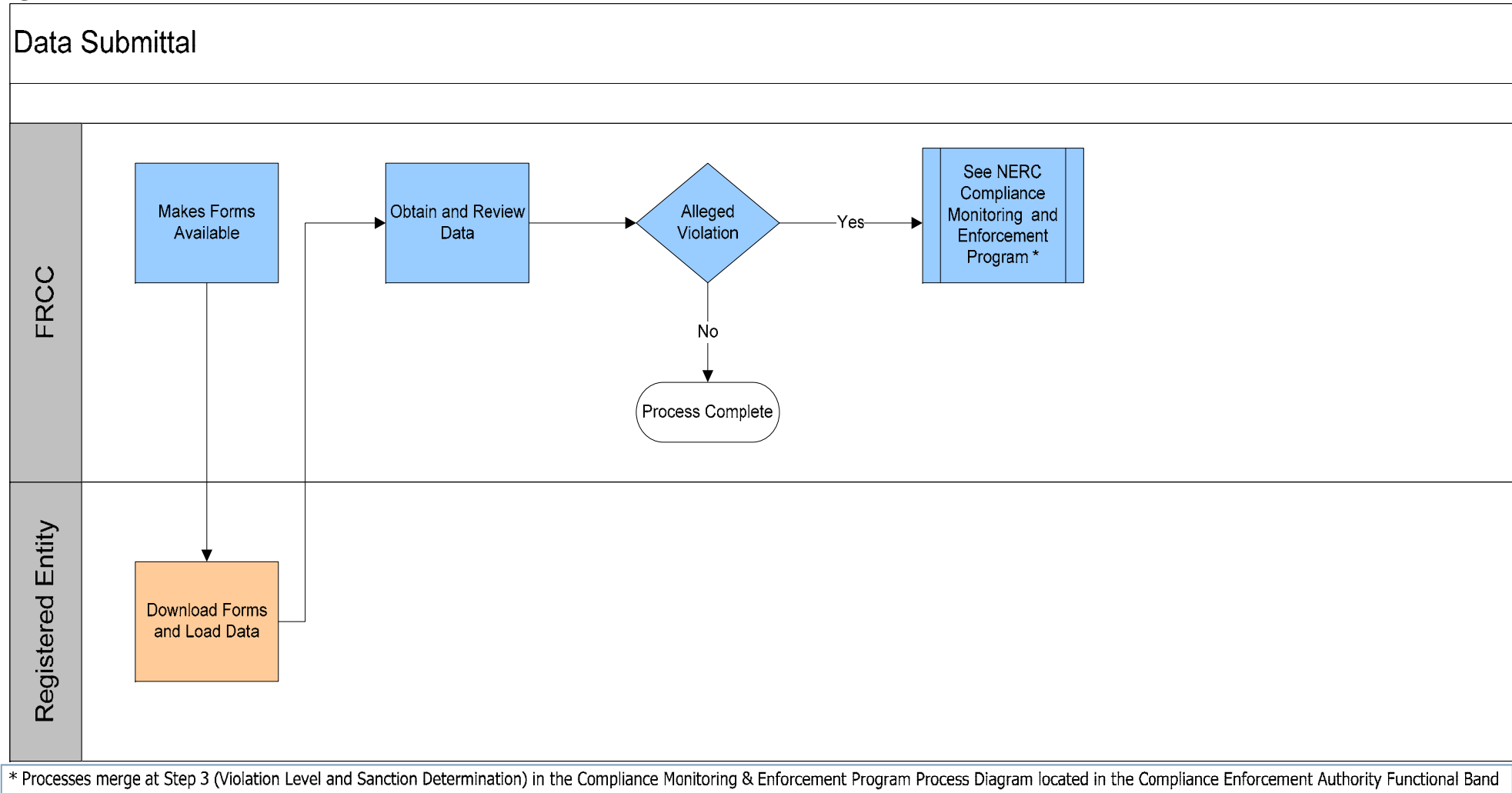
- The FRCC posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The FRCC ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained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

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<sup>8</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the FRCC's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

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

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

### 3.8 Complaints

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

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

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

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

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>9</sup>

- The complainant notifies NERC or the FRCC using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and the FRCC web sites. The Complaint should include sufficient information to enable NERC or the FRCC to make an assessment of whether the initiation of a Compliance Violation Investigation is

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<sup>9</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

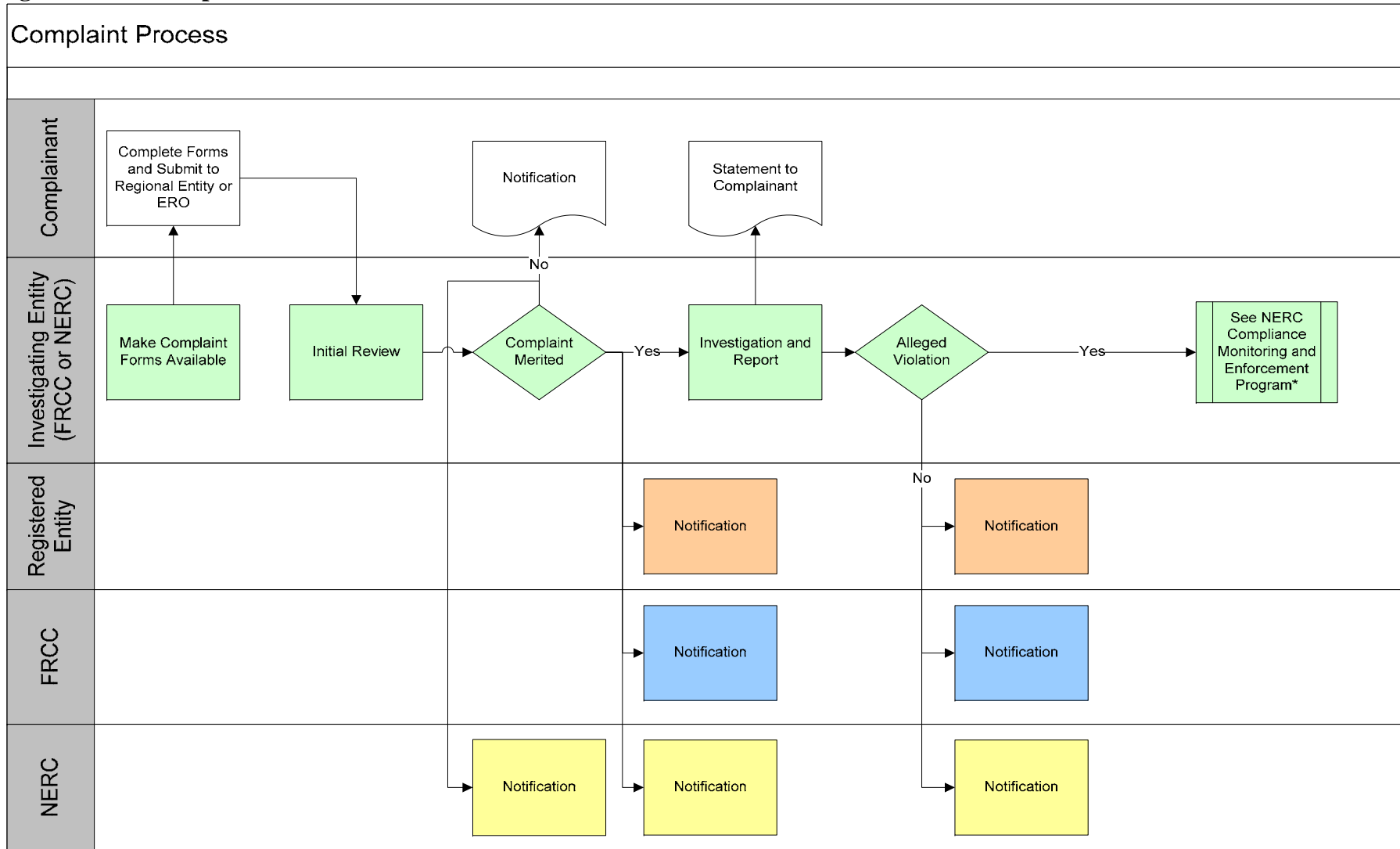
## **Compliance Monitoring and Enforcement Program**

warranted. NERC or the FRCC may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

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

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

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

## **Compliance Monitoring and Enforcement Program**

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

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>10</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by the FRCC will either be directed to NERC or the FRCC will collect and forward the information to NERC, at the FRCC's discretion. Neither NERC nor the FRCC shall disclose the identity of any person or entity reporting possible violations to NERC or to a FRCC that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where the FRCC collects the information, by NERC and the FRCC. If the FRCC determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## **4.0 ANNUAL IMPLEMENTATION PLANS**

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

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

### **4.2 FRCC Implementation Plan**

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

## **5.0 ENFORCEMENT ACTIONS**

The FRCC shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the FRCC's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and the FRCC shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the FRCC.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process

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<sup>10</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

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

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the FRCC believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the FRCC to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the FRCC will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;
- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the shortened procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedure**, and

## Compliance Monitoring and Enforcement Program

(viii) required procedures to submit the Registered Entity's Mitigation Plan.

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

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

### 5.2 Registered Entity Response

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

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the FRCC a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The FRCC shall schedule a conference with a FRCC Board Compliance Committee (BCC) appointed Compliance Advisory Panel (CAP) and the Registered Entity within ten (10) business days after receipt of the response. No person who is employed by, or has a financial or other interest in the registered entity contesting the alleged violation, or any of its affiliates, may participate as a member of the CAP. The CAP will include at least one member of the FRCC Compliance Staff and all CAP discussions will be conducted confidentially. If the FRCC and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made within ten (10) business days, the violation will become a Confirmed Violation when filed by NERC with FERC.

If a hearing is requested the FRCC shall initiate the hearing process by convening the FRCC BCC and issuing a written notice of hearing to the Registered Entity and the FRCC BCC and identifying the FRCC's designated hearing representative.<sup>11</sup>

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<sup>11</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the FRCC, the Registered Entity may file a request for hearing with the FRCC.



## **Compliance Monitoring and Enforcement Program**

### **5.3 Hearing Procedure for Compliance Hearings**

The FRCC hearing procedure is set forth in **Attachment 2**.

### **5.4 Settlement Process**

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

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

The FRCC shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify the FRCC and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the FRCC will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement. The FRCC will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

## Compliance Monitoring and Enforcement Program

### 5.5 NERC Appeal Process

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**.<sup>12</sup>

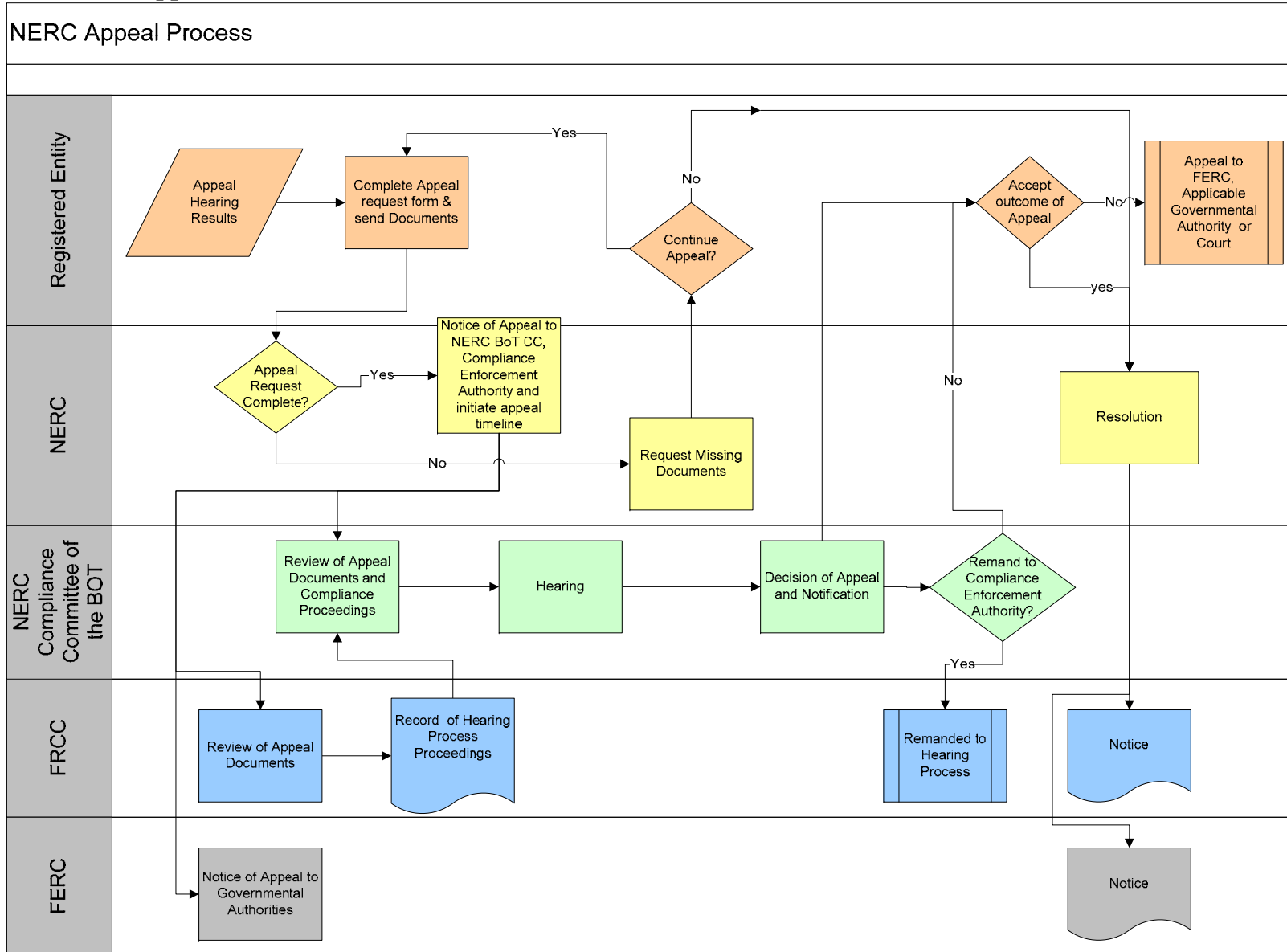
On appeal, NERC shall either affirm the FRCC decision or remand to the FRCC with reasons for its remand, which may include a direction to the FRCC to revise the decision. If NERC directs the FRCC to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff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

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<sup>12</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty**

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

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

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

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

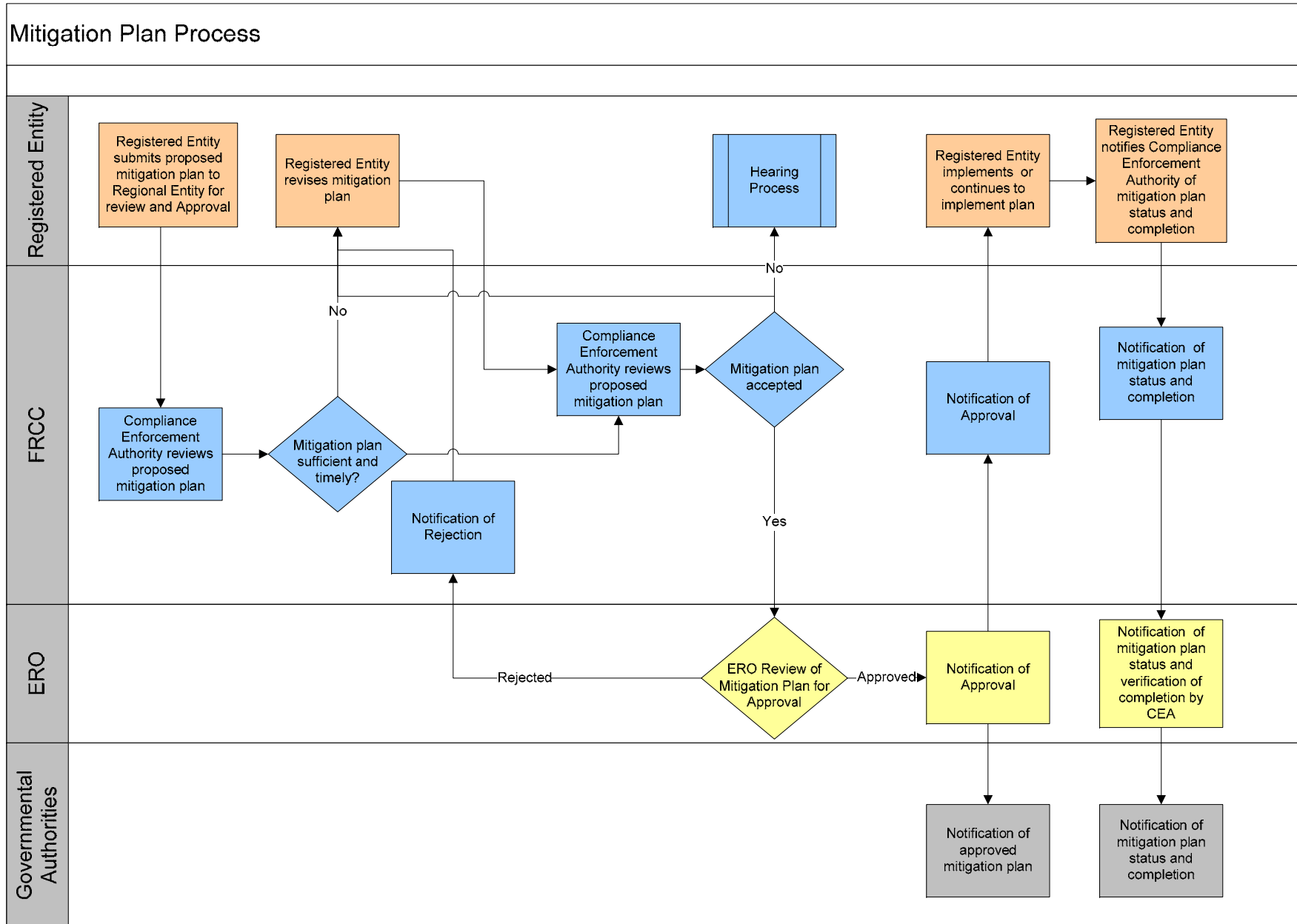
### **6.1 Requirement for Submission of Mitigation Plans**

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

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

# Compliance Monitoring and Enforcement Program

## Figure 6.1 – Mitigation Plan Process



## **Compliance Monitoring and Enforcement Program**

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

A Mitigation Plan shall include the following information:

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

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

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

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

## **Compliance Monitoring and Enforcement Program**

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

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

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

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

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

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

## **Compliance Monitoring and Enforcement Program**

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

Unless extended by the FRCC, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. If the FRCC rejects a Mitigation Plan, the FRCC will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The FRCC will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the FRCC will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedure, by submitting to the FRCC a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the FRCC will issue a written statement accepting a Mitigation Plan it deems as appropriate.

The FRCC will notify NERC within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the FRCC, will notify the FRCC, which will in turn notify the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the FRCC, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC may subsequently publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0.

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

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

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

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any



## **Compliance Monitoring and Enforcement Program**

violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the FRCC. In addition, the FRCC may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

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

### **6.7 Recordkeeping**

The FRCC will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

### **7.0 REMEDIAL ACTION DIRECTIVES**

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

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

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

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

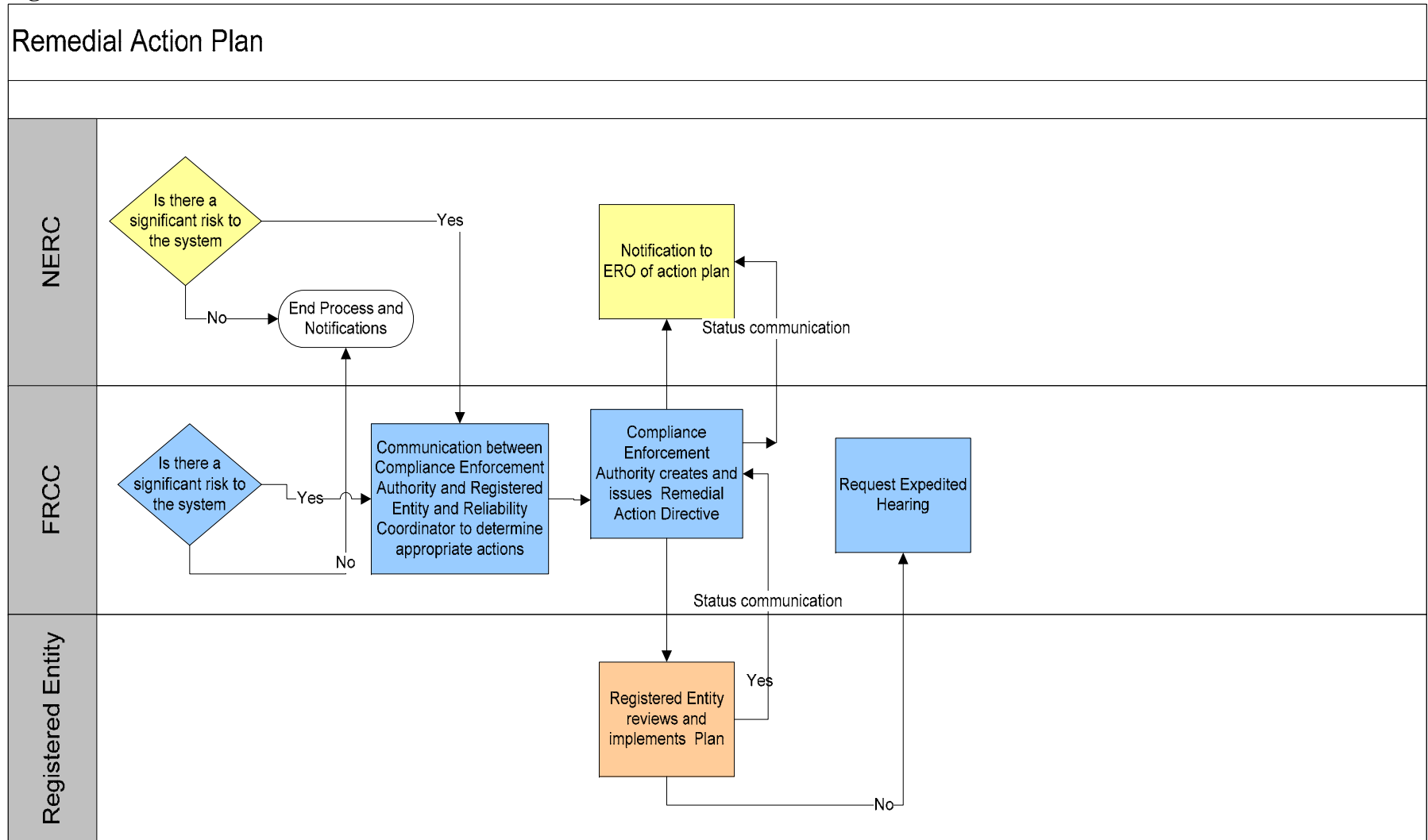
The FRCC will notify NERC within two (2) business days after issuing a Remedial Action Directive.

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

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

# Compliance Monitoring and Enforcement Program

**Figure 7.0 – Remedial Action Process**



## **Compliance Monitoring and Enforcement Program**

### **8.0 REPORTING AND DISCLOSURE**

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

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

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

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

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

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

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

#### **9.1 Records Management**

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

#### **9.2 Retention Requirements**

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

Upon request from NERC, the FRCC will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the

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Compliance Program. In providing the information and data to NERC, the FRCC shall preserve any mark of confidentiality.

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

#### **9.3.1 Definitions**

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

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

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

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

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

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

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

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

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

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

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

A full Compliance Audit may be scheduled at this step.

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

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

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## ATTACHMENT 2 - HEARING PROCEDURES

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# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

The provisions set forth in this Attachment 2 (“Hearing Procedures”) shall apply to and govern practice and procedure before the FRCC in hearings in the United States conducted into (i) whether Registered Entities within the FRCC’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before the FRCC Board Compliance Committee (BCC)<sup>1</sup> established by the FRCC. The composition of the BCC, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the BCC on any matter brought before it for decision.

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

#### 1.1.2 Deviation

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

#### 1.1.3 Standards for Discretion

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

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in FRCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action

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<sup>1</sup> See Exhibit D of the Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council for a description of the FRCC BCC.

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shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.

- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the FRCC's conflict of interest policy.
- e) Impartiality - Persons appearing before the BCC should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### **1.1.4 Interpretation**

These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.

Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.

To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

### **1.1.5 Definitions**

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

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

“Clerk,” as designated by the FRCC.

“FRCC's area of responsibility” means the FRCC's corporate region. The FRCC's area of responsibility is shown in Exhibit A to the delegation agreement between the FRCC and NERC.

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

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

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

“Manager of Compliance” means the Manager of Compliance of the FRCC, who is responsible for the management and supervision of Compliance Staff.

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

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

“FERC” means the Federal Energy Regulatory Commission.

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

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

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

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

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

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

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

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

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

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

All filings made with BCC must contain:

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

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

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on

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one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.

- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

#### **Where to File**

Filings shall be made with the Clerk of the FRCC located at its principal office. The office will be open from 8:00 am – 5:00 pm local time each day except Saturday, Sunday, legal holidays and any other day declared by the FRCC.

#### **When to File**

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the BCC. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than 5:00 pm local time on the date specified.

#### **How to File**

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

#### **Number of Copies to File**

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

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### **Signature**

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

### **Verification**

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

### **Certificate of Service**

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

#### **1.2.4 Service**

##### **Service List**

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

##### **By Participants**

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

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### **By the Clerk**

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

### **Effective Date of Service**

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

**1.2.5** (Section left intentionally blank)

### **1.2.6 Extensions of Time**

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

### **1.2.7 Amendments**

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

### **1.2.8 Transcripts**

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



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what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

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

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

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

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

All hearings and oral arguments shall be held at the principal office of the FRCC unless the Hearing Officer or BCC designates a different location.

### **1.2.11 Participant Participation**

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

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

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

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

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

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation. Unless NERC provides a different

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docketing system that will be used uniformly by the FRCC, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[FRCC]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

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

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

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

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

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

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

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

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hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity requests the shortened hearing procedure, Compliance Staff shall submit a filing within five (5) business days of the Registered Entity's hearing request that states whether Staff agrees to use the shortened hearing procedure. If Staff 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 shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

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

### **1.3.2 Shortened Hearing Procedure**

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

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

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

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

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

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### **1.4 General Hearing Procedure**

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

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

#### **1.4.2 Hearing Officer**

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

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

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

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- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue protective orders pursuant to Paragraph 1.5.9;
- 11) To issue initial opinions; and
- 12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 FRCC Board Compliance Committee**

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

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

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initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

### **1.4.4 Interlocutory Review**

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

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

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

### **1.4.5 Disqualification**

A Hearing Officer, Technical Advisor or member of the BCC shall recuse himself or herself from a proceeding if participation would violate the FRCC's applicable conflict of interest policy.

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

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

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

### **1.4.6 Technical Advisor**

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

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

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

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:



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

### 1.4.8 Appearances

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

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

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

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

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

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

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

### **1.4.10 Consolidation of Proceedings**

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

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

## **1.5 Prehearing Procedure**

### **1.5.1 Waiver of Time Limits**

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### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

- 1) Preliminarily identify the issues;

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

### **1.5.3 Summary Disposition**

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

### **1.5.4 Status Hearings**

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

### **1.5.5 Motions**

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

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

### **1.5.6 Experts**

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

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

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

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

(A) requests for information to the Respondent;

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

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

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

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

(F) all other documents obtained from persons not employed by the FRCC.

However, the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or BCC shall oversee the Staff's designation of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event that a document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff, or a document required to be produced by any other Participant is not produced to the Respondent no rehearing or amended decision of a proceeding

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already heard or decided shall be required where the failure to make the document available was not harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff or another Participant to produce a document, the burden shall be on Staff or the other Participant that failed to produce the document to show that such failure was harmless error. The Hearing Officer, or, upon review, the BCC shall determine whether the failure to make the document available was harmless error.

### 1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 408 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, and requests for admissions. Unless otherwise directed by the Hearing Officer or BCC upon motion by a Participant or by the Hearing Officer, or by the BCC on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 408 and 410 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408 and 385.410, which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (a) The provisions of Subparagraphs (b) through (g) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the BCC do not have the authority to issue subpoenas to, or otherwise order or compel the appearance by or production of documents or information by, any person or entity that is not a Participant.
- (d) References to the “Commission” in Rules 402 through 408 and 410 shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b) and the second reference in Rule 410(d) shall be deemed to be to the BCC, and (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff.
- (e) Unless otherwise ordered by the Hearing Officer or BCC, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, or request for admissions, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request.
- (f) Unless otherwise ordered by the Hearing Officer or BCC, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6)

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months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.

- (g) Notwithstanding (e) and (f), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

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

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

Unless the Hearing Officer orders otherwise and with the exception of any adverse Participant examination pursuant to Paragraph 1.6.16, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination, the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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



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

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

### 1.5.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as NERC (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any FRCC, NERC or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).
- c) A Participant submitting a motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.

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- e) The protective order shall identify the data, documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

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

The Hearing Officer or the BCC may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memoranda prior to the evidentiary hearing that outline each Participant's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. The purpose of such memoranda will be to aid the Hearing Officer and BCC in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum. The Hearing Officer may establish page limitations on such submissions.

## **1.6 Evidentiary Hearing Procedure**

### **1.6.1 Evidentiary Hearings**

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

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

In all proceedings Compliance Staff shall open and close.

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

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

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

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

### **1.6.5 Exhibits**

All material offered in evidence, unless the Hearing Officer allows oral testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

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

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the BCC have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

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

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

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

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

Except in exceptional cases and upon a showing of good cause, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the FRCC's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

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

### **1.6.9 Stipulations**

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

### **1.6.10 Official Notice**

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

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

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- 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 FRCC.
- 6) All other matters of which the courts of the United States may take judicial notice.

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

### **1.6.11 Admissibility of Evidence**

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

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

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

### **1.6.12 Offer of Proof**

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

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

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

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full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

### **1.6.14 Cross-Examination**

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

### **1.6.15 Redirect Examination**

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

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

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

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

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

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

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.

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

### **1.7.2 Other Pleadings**

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

### **1.7.3 Draft Initial Opinions**

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

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

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

### **1.7.5 Exceptions**

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) business days after the

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time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."

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

### 1.7.6 Oral Argument

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

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



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argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

### **1.7.7 Additional Hearings**

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

### **1.7.8 BCC Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the BCC shall issue its final order. Issuance of a final order shall require (i) a quorum of the BCC, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the BCC, and (ii) majority vote of the members of the BCC voting on the final order (which number of members voting shall not be less than a quorum). The BCC shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The BCC will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty". The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The BCC shall direct the Clerk to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights to NERC or to FERC, as applicable.

### **1.7.9 The Record**

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

- 1) Notice of Alleged Violation and Registered Entity's response thereto;
- 2) Registered Entity's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;

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- 3) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 4) Registered Entity's request for a hearing;
- 5) Participant filings, motions, and responses;
- 6) Notices, rulings, orders and other issuances of the Hearing Officer and BCC;
- 7) Transcripts;
- 8) Evidence received;
- 9) Written comments submitted in lieu of written testimony;
- 10) Matters officially noticed;
- 11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 12) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 13) Post-hearing pleadings other than briefs;
- 14) The Hearing Officer's initial opinion;
- 15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 16) The BCC's final order, any notice of Penalty issued therewith, and the Clerk's notice transmitting the final order to the Participants;
- 17) All notices of ex parte communications; and
- 18) Any notifications of recusal and motions for disqualification of a member of the BCC or Hearing Officer or Technical Advisor and any responses or replies thereto.

### **1.7.10 Appeal**

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

### **1.8 Settlement**

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

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### **1.9 Remedial Action Directives**

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

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

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

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

#### **1.9.2 Remedial Action Directive Hearing Procedure**

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

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

- a) The Hearing Officer or the BCC will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing

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arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.

- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the BCC. Oral argument shall not be held.
- f) The BCC shall issue a summary written decision within ten (10) business days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the BCC shall issue a full written decision. The written decision shall state the conclusions of the BCC with respect to the Remedial Action Directive, and shall explain the reasons for the BCC's conclusions.

## Exhibit E — Funding

### 1. Scope of activities funded through the ERO funding mechanism

FRCC shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

### 2. Allocation of Costs

FRCC shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement. FRCC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate FRCC's dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

### 3. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities identified by FRCC covering the NERC and FRCC budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund FRCC's costs identified in Section 1 of this Exhibit E in four equal quarterly payments.

### 4. Application of Penalties

All penalty monies received by FRCC other than penalty monies received from an operational function or division or affiliated entity of FRCC shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement

for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of FRCC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### 5. Budget and Funding for FRCC's Non-Statutory Activities

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such other functions and activities being referred to herein as "statutory activities"), FRCC performs the following other functions and activities (such other functions and activities being referred to in this Section 5 as "non-statutory activities")

#### **Non-Statutory Activities**

The Member Services division of the FRCC provides, coordinates or administers a variety of services relating to the reliable planning and operation of the bulk power system in the FRCC Region. These services are carried out by the FRCC Planning Committee (PC) and the FRCC Operating Committee (OC), and its various subcommittees, task forces and working groups.

#### **Planning Committee (PC)**

The PC promotes the reliability of the bulk power system in the FRCC Region, and assesses and encourages generation and transmission adequacy. The PC, through the FRCC Regional Transmission Planning Process, provides a vehicle for ensuring that transmission planning within the FRCC will provide for the development of a robust transmission network within the FRCC Region. The activities of the PC include the activities of the following Member Services working groups: the Stability Working Group, the Transmission Working Group, the Resources Working Group, the ATG Working Group and the Fuel Reliability Working Group. The activities of these working groups pertain to the facilitated and coordinated effort for the running of engineering studies and communications in a cost effective, open and transparent manner for the members to complete common tasks to ensure future bulk power reliability. This includes any transmission planning that allows transmission owners to meet FERC's Order 890 requirement for wide area planning and implementation of data and reporting to the Florida Public Service Commission on resource adequacy and transmission reliability.

#### **Operating Committee (OC)**

The OC is responsible for the coordination, planning, operation and maintenance of reliable bulk power supply in the FRCC. Its primary reliability goals are the continuous improvement of the situational awareness of the operators interconnected within the FRCC, and ensuring that adequate physical, operational and cyber security objectives are in place for the Region's shared communications network. The OC ensures reliable operations are maintained through the development and implementation of the FRCC Security Process.

### **Operating Reliability Subcommittee (ORS)**

The ORS provides overall administration for the development and implementation of operating procedures and other reliability matters. The ORS reviews and assesses regional import and export limits, scheduled transmission outages, real-time system reliability, events analysis, information and data exchange and other reliability issues. The ORS provides formal oversight and implementation of the Security Process which establishes the reliability responsibilities of the various entities within the Region and specifically monitors the agents responsible for performing the (RC) and Operations Planning Coordinator (OPC) functions.

### **Data Exchange Working Group (DEWG)**

The DEWG, subordinate to the ORS, supports the real-time data needs of the FRCC Reliability Coordinator and other entities identified by the FRCC ORS, and for developing methodologies to facilitate the exchange of real-time, modeling, and other operational data to help assure reliable electric power system operations. Within the FRCC, all entities provide system data via the FRCC Reliability Data Link (RDL). The FRCC RDL receives all substation topology information, line flows, voltage levels, unit parameters, etc. from the operating entities on a real-time basis. Data is available to all.

### **FRCC Telecommunications Subcommittee (TS)**

The TS provides formal oversight over the TS budget which is included in the OC budget. The primary purpose of the TS is to ensure that adequate and redundant communications facilities are made available to the operating entities within the FRCC. The TS administers the FRCC hotline program, Satellite phone program, RDL program and also ensures that reliable and redundant communications are maintained with NERCNet, from a Regional communications perspective. All TS programs are in support of the RC function and are therefore non-statutory, with the exception of the FRCC satellite phone program which is a tool used by the Regional Entity to perform situational awareness and thus is budgeted as statutory.

### **Non Statutory Situation Awareness and Infrastructure Security Program**

This program maintains and enhances the situational awareness of the operators of the interconnected system by supporting the tools necessary to efficiently communicate Electricity Sector Information Sharing and Analysis Center information within and outside of the FRCC Region. The program also ensures that the FRCC entity shared communications networks, include the appropriate physical, operational, and cyber security protections in order to function reliably.

FRCC shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

(i) Separation of funding sources for statutory activities and non-statutory activities. The FRCC maintains a separate bank account for Statutory receivable collection. The statutory billing is done at the beginning of each quarter and an invoice is rendered to

NERC only for the statutory receivable. NERC wires monies due directly into the Statutory bank account. All non-statutory receivables are deposited into a separate bank account. Member Services invoices are rendered to each member quarterly and deposited into this separate account.

(ii) Separation of costs of statutory activities and non-statutory activities. FRCC has adopted the NERC Chart of Accounts for Expenses and the NERC Rules of Procedure Categories as well as Member Services Functional Categories and utilizes these in order to correctly code each invoice received for all goods and services as well as for staff to specify where their time is spent each day for their time accounting reports. These methods are used to ensure that no statutory funds are used to pay for non-statutory expenses and that no non-statutory funds are used to pay for statutory expenses.

Each employee and officer (with the exception of the President and CEO) turns in a time sheet with their time accounted for between statutory and non-statutory functions that they personally spent their time on. Within statutory and non-statutory they further break down their time by the function areas. Each employee and officer fills out their time sheet daily and turns them in every two weeks to the Controller. The employees use the department codes to split their time according to what they did that day. These times are totaled by the Controller and Full-Time Equivalents (FTE's) for each function are calculated.

Accounting personnel route to the responsible department head all invoices pertaining to their job responsibility. The department head assigns the functional category, signs the invoices and returns it to accounting for payment processing. The accounting staff evaluates and assigns the appropriate General Ledger account number based on the Chart of Accounts and enters both the account number and the department number on the accounts payable system. Expenses such as Facilities Rent, stationary, utilities and other items of a general nature are split to each of the functions based on FTE's, on a monthly basis. Only expenses that cannot be determined to be specifically for a particular function are split on an allocated basis. Any expenses received that are for a particular function within a particular area are charged directly to that area and are not split.

All expenses are reviewed by a Department Head, an Accounting Assistant and the Controller for accuracy of coding and assignment to particular functions whether that be for Statutory or Non-statutory.

FRCC shall provide its budget for such non-statutory activities to NERC at the same time that FRCC submits its annual budget request to NERC pursuant to Section 1. FRCC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of FRCC's non-statutory activities, and a description of the funding sources for the non-statutory activities, FRCC agrees that no costs of non-statutory activities are to be included in the calculation of FRCC's dues, fees, and other charges for its statutory activities.



**ATTACHMENT 4B**  
**REDLINED VERSION**

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND FLORIDA RELIABILITY COORDINATING COUNCIL**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this ~~5th day of April 2008~~ \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Florida Reliability Coordinating Council, an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and FRCC may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

**WHEREAS**, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter “the Act”) and, among other things, provides for the establishment of an electric reliability organization (“ERO”) to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

**WHEREAS**, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter “Order 672”);

**WHEREAS**, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

**WHEREAS**, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

**WHEREAS**, the Act and Section 39.8 of the Commission’s regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as FRCC provided that:

(A) The Regional Entity is governed by —

- (i) an independent board;
- (ii) a balanced stakeholder board; or
- (iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

**WHEREAS**, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: “[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved”;

**WHEREAS**, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

**WHEREAS**, FRCC is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

**WHEREAS**, NERC will work through FRCC to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

**WHEREAS**, NERC has concluded that FRCC meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, NERC and FRCC agree as follows:

**1. Definitions.** The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to FRCC to propose and enforce Reliability Standards pursuant to the Act.

(d) FRCC's Rules means the bylaws, a rule of procedure or other organizational rule or protocol of FRCC.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

**2. Representations.**

(a) For purposes of its Delegated Authority, FRCC hereby represents and warrants to NERC that:

(i) FRCC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. FRCC is governed in accordance with its bylaws by a balanced stakeholder board. Pursuant to these bylaws, no two industry sectors can control any FRCC decision and no single industry sector can veto any FRCC decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**<sup>1</sup>, and as so attached are in full force and effect. No other such corporate governance documents are binding upon FRCC.

(ii) As set forth in **Exhibit C** hereto<sup>2</sup>, FRCC has developed a standards development procedure, which provides the process that FRCC may use to develop Regional Reliability Standards that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto<sup>3</sup>, FRCC has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to FRCC that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

### 3. **Covenants.**

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<sup>1</sup> The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

<sup>2</sup> The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

<sup>3</sup> The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.

(a) During the term of this Agreement, FRCC shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the FRCC Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of FRCC under this Agreement without first obtaining the consent of FRCC which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and FRCC shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

#### **4. Delegation of Authority.**

(a) Based upon the representations, warranties and covenants of [REGIONAL ENTITY] in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to FRCC for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) Not Applicable.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, FRCC shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

**5. Reliability Standards.**

~~(a)~~—In connection with its Delegated Authority, FRCC shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords FRCC reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards through FRCC's process as set forth in **Exhibit C**. Proposals approved through FRCC's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. FRCC may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

~~(b)~~—~~Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest. Any person challenging such proposal from the FRCC shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by the FRCC during NERC's review of the proposal.~~

**6. Enforcement.**

(a) In connection with its delegated authority pursuant to this Agreement, FRCC shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and FRCC agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. FRCC may not

change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, FRCC agrees to comply with the NERC Rules in implementing this program.

(b) FRCC shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and FRCC shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by FRCC shall be filed with NERC, in accordance with the NERC Rules.

(e) FRCC shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) FRCC shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.



(g) As part of its compliance enforcement program, FRCC shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review FRCC's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) FRCC shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

**7. Delegation-Related Services.** NERC will engage FRCC on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

**8. Funding.** FRCC and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund FRCC activities necessary for FRCC to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not

impose any obligation or requirement regarding Delegated Authority upon FRCC without providing appropriate funding to carry out such mandates;

(b) FRCC and NERC agree that costs of carrying out FRCC's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is proposed by FRCC and approved by NERC and the Commission. If FRCC proposes to use a formula other than net energy for load beginning in the following year, FRCC shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves expressly provided for in the annual business plan and budget submitted by NERC and FRCC to the Commission pursuant to 18 C.F.R. §39.4 for such year, as set forth in **Exhibit E**;

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide FRCC with the form for budget submittal no later than April 30 of the prior year.

(e) FRCC shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other FRCC activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The FRCC budget submission shall include supporting materials, including FRCC's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the

actual results at the NERC and Regional Entity level. FRCC shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. [NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.](#)

(f) FRCC's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve FRCC's budget for meeting its responsibilities under the Delegation Agreement.

(h) FRCC shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) FRCC shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of FRCC in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which FRCC shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which FRCC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of FRCC.

**9. Assignment.** This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. FRCC may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit

FRCC from contracting with other entities to assist it in carrying out its Delegated Authority, provided FRCC retains control and responsibility for such Delegated Authority.

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the “Default Notice”). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

(a) This Agreement shall become effective thirty (30) days after the date of issuance of a final Commission order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.

(b) The initial term of the Agreement shall be three (3) years, [from the original effective date of May 2, 2007](#), prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that FRCC continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If FRCC meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of FRCC’s Delegated Authority to NERC or to another eligible entity. The

termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time FRCC may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

**12. Limitation of Liability.** FRCC and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and FRCC shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the FRCC's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the FRCC or NERC is found liable for gross negligence or intentional misconduct, in which case FRCC or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

13. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

14. **Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

15. **Amendment.** Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

16. **Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of FRCC under this Agreement

without first obtaining the consent of FRCC, which consent shall not be unreasonably withheld or delayed. To the extent FRCC does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of FRCC under this Agreement, FRCC shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by FRCC to NERC and the Commission, or at such other time as may be mutually agreed by FRCC and NERC.

**17. Dispute Resolution.** In the event a dispute arises under this Agreement between NERC and FRCC representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

**18. Notice.** Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric  
Reliability Corporation  
116-390 Village Blvd.  
Princeton, NJ 08540-5721  
Attn: David Nevius  
Facsimile: (609) 452-9550

If to FRCC:

Florida Reliability Coordinating Council  
1408 N. Westshore Blvd.  
Suite 1002  
Tampa, FL 33607-4512  
Attn: Sarah Rogers  
Facsimile: (813) 289-5644

**19. Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

**20. Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

**21. Savings Clause.** Nothing in this Agreement shall be construed to preempt or limit any authority that FRCC may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in **Exhibit A** and do not result in a lessening of reliability outside the region described in **Exhibit A**.

**22. Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

**23. Execution of Counterparts.** This Agreement may be executed in counterparts and each shall have the same force and effect as the original.



**NOW THEREFORE**, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

FLORIDA RELIABILITY  
COORDINATING COUNCIL

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: ~~David Whiteley~~ \_\_\_\_\_

Name: Sarah S. Rogers

Title: \_\_\_\_\_

Title: President & CEO

Date: ~~March 28, 2008~~ \_\_\_\_\_

Date: ~~March 28, 2008~~ \_\_\_\_\_

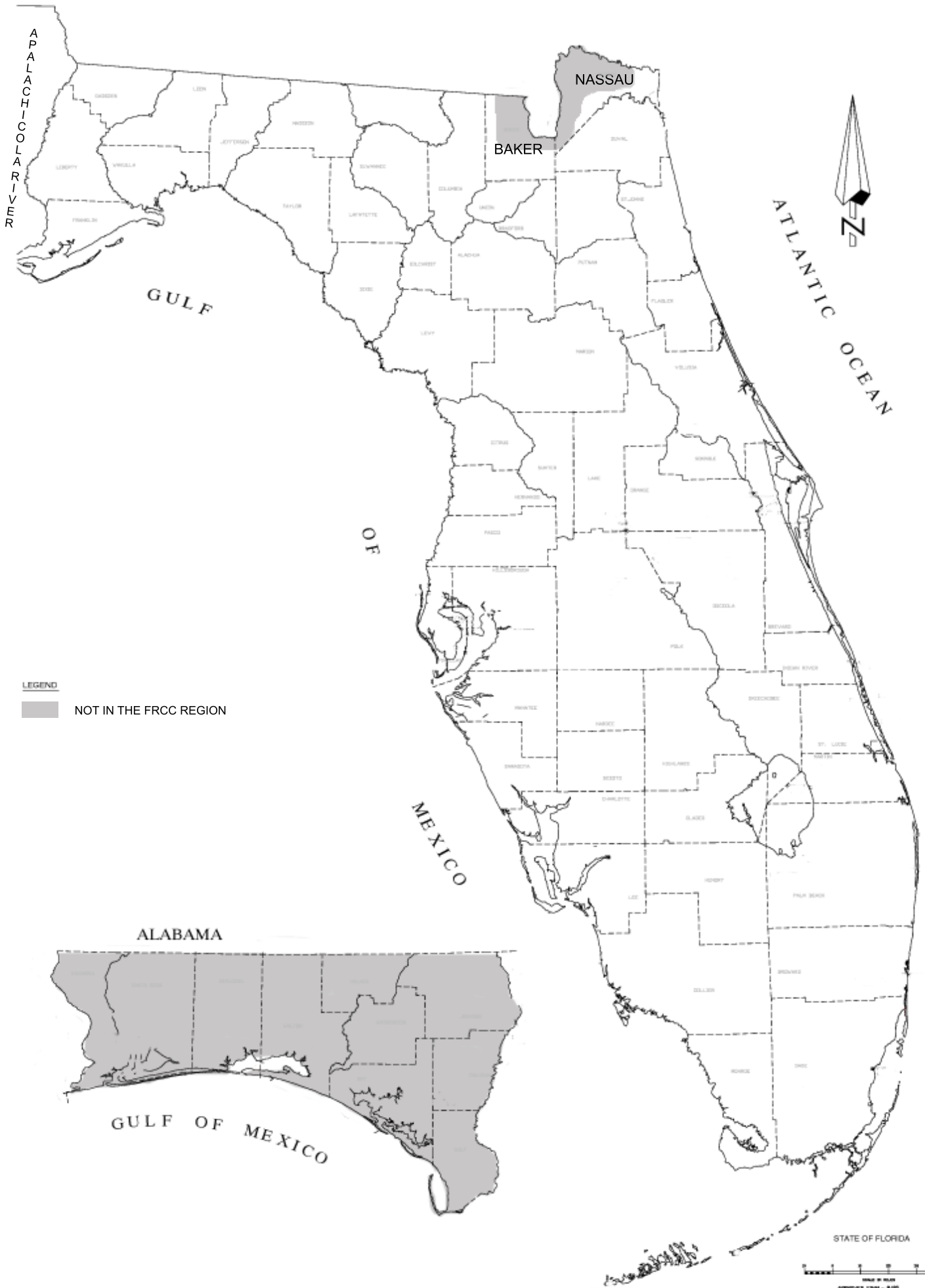
## **Exhibit A —FRCC Boundaries**

(see attached map)

The FRCC physical boundaries are entirely within the State of Florida. The area of the State of Florida that is within the FRCC Region is peninsular Florida east of the Apalachicola River with the exception of a small section of Baker and Nassau counties in northeast Florida. Areas west of the Apalachicola River in Florida are within the SERC Region. The entire FRCC Region is within the Eastern Interconnection. The entire FRCC Region is under the direction of the FRCC Reliability Coordinator.

The FRCC Region interconnects with the SERC Region via 10 transmission lines. The 10 lines consist of two 500 kV, four 230 kV and four 115 kV lines. These lines are referred to as the “Florida / Southern Interface”.

The areas of Baker and Nassau counties that are not part of the FRCC Region are part of the SERC Region. These sections are part of the Okefenokee Rural Electric Membership Corporation (OREMC) that is headquartered in Nahunta, GA. Roughly two thirds of OREMC load is in Georgia and one third is in Florida. The majority of the OREMC load in Florida is connected directly to the Southern Company Balancing Area in the SERC Region. A small portion of the OREMC load, about five MW, is supplied as a radial feed from FPL West Nassau Substation. OREMC has secured firm transmission service from JEA on the Florida / Southern Interface to supply this load. The OREMC schedules energy on an hourly basis to cover this load. SERC will be responsible for registration and compliance monitoring of OREMC.



**LEGEND**

■ NOT IN THE FRCC REGION

ALABAMA

GULF OF MEXICO

STATE OF FLORIDA

Scale bar and projection information.

## Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws, which NERC agrees demonstrate that the Regional Entity meets the following criteria:

**CRITERION 1:** The Regional Entity shall be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board. (Federal Power Act § 215(e)(4)(A), 18 C.F.R. § 39.8(c)(1), Order No. 672 at ¶ 727.)

**CRITERION 2:** The Regional Entity has established rules that assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors. Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 699, 700.)

**CRITERION 3:** If the Regional Entity has members, the Regional Entity has established rules that assure that its membership is open, that it charges no more than a nominal membership fee and agrees to waive the fee for good cause shown, and that membership is not a condition for participating in the development of or voting on proposed Regional Reliability Standards. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶¶ 170-173.)

**CRITERION 4:** The Regional Entity has established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. (Federal Power Act § 215(c)(2)(A) and (e)(4), 18 C.F.R. § 39.8(c)(2), Order No. 672 at ¶ 728.)

**CRITERION 5:** The Regional Entity has established rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties. (Federal Power Act § 215(c)(2)(D) and (e)(4), 18 C.F.R. § 39.8(c)(2).)

**EXHIBIT B  
TO PRO FORMA DELEGATION AGREEMENT**

**BYLAWS  
Florida Reliability Coordinating Council, Inc.**

*Amended ~~September 25, 2007~~ June 27, 2008*



1408 N. Westshore Blvd., Suite 1002, Tampa, Florida 33607-4512  
Phone 813.289-5644 \* Fax 813.289-5646  
[www.frcc.com](http://www.frcc.com)

Amended and Restated FRCC Regional Delegation Agreement  
Revised for July 21, 2008 Compliance Filing

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**BYLAWS OF  
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**

**ARTICLE I**

**Membership**

**Section 1.1 Eligibility.**

(a) Membership in the Florida Reliability Coordinating Council, Inc. (“FRCC”) is open to any entity, without cost, that: (i) has a material interest in the reliability of the bulk power system in the FRCC region; (ii) satisfies the criteria for membership specified in this Section 1.1; (iii) qualifies for eligibility in one or more of the Sectors identified in Section 1.2; (iv) submits a written request for membership; and (v) agrees to comply with and be bound by these FRCC Bylaws (“Bylaws”) and other rules and regulations adopted by the FRCC Board of Directors, by execution of the appropriate form of Member Agreement set forth in Appendix A to these Bylaws (“Member Agreement”). Any person or entity that meets the foregoing requirements shall become a “Member” of FRCC.

(b) FRCC shall engage in two categories of activities:

(i) FRCC shall engage in the “Regional Entity Activities” specified in Section 1 of Exhibit E of the Delegation Agreement between FRCC and the North American Electric Reliability Corporation (“NERC”) dated May 2, 2007, as amended from time to time with the agreement of NERC and the approval of the Federal Energy Regulatory Commission (“Delegation Agreement”). Under the Delegation Agreement, FRCC is the Regional Entity, as defined in Sec. 215 of the Federal Power Act, with delegated authority to propose and enforce Reliability Standards for the bulk power system in the FRCC Region. The FRCC Region is defined as the geographic area of Florida east of the Apalachicola River.

(ii) FRCC shall engage in certain “Member Services Activities,” under which it provides, coordinates or administers a variety of services relating to the planning and operation of the bulk power system in the FRCC Region for or on behalf of entities meeting the criteria in Section 1.1(c)(ii) and participating in the funding of such services as specified in these Bylaws. The “Member Services” are specified in the business plan and budget approved by the Board of Directors in accordance with these Bylaws for submission to NERC under the Delegation Agreement, and as approved by NERC and the Federal Energy Regulatory Commission (“Business Plan and Budget”). Member Services are funded as specified in Section 6.2 of these Bylaws.

(c) FRCC shall have two types of Members:

(i) All Members of FRCC shall be “Regional Entity Members.” Regional Entity Members shall be eligible to participate in the Regional Entity Activities of FRCC. Such participation shall be in accordance with these Bylaws, the Member Agreement, and the Delegation Agreement, as from time to time adopted or amended and approved, and such other requirements as govern FRCC as a Regional Entity.

(ii) All Members that participate in the generation, marketing, transmission or purchase for resale of electric energy, ancillary services or capacity on, from or to the bulk power system in the FRCC Region may choose to be “Services Members,” and may participate in FRCC Member Services Activities as specified in these Bylaws. Subject to the requirements of Section 1.2, only Members that are Services Members shall be eligible to participate in decisions governing the Member Services of FRCC, or the voting rights and funding obligations of Services Members.

**Section 1.2 Voting Member.** A Voting Member is a Member that is not an Affiliate Member or an Adjunct Member. All Voting Members shall be eligible to vote on questions governing Regional Entity Activities. Only Voting Members that are Services Members shall be eligible to vote on questions governing Member Services or Member Services Activities. For purposes of the following Sector classifications, “Load Serving Entity,” whether standing alone or as part of another specified term, shall mean an entity that provides electric service to persons or entities other than the Load Serving Entity itself that purchase such service for their own use and not for resale. Voting Members shall be classified into one of the following Sectors, based on the primary nature of its activities in the FRCC Region relevant to Regional Entity Activities:

(a) **Suppliers Sector** - any entity engaged in wholesale power marketing transactions in the FRCC Region; or a generating entity that is included in the NERC Compliance Registry as a generation owner or generation operator for a facility in the FRCC Region, or that owns or is developing generation greater than 20 MW located within the FRCC Region and meets any of the following: (1) an entity with FERC-approved market-based rate authority, or (2) an exempt wholesale generator, or (3) a facility selling any output pursuant to a power purchase agreement (including fuel conversion arrangements), or (4) a FERC approved Qualifying Facility.

(b) **Non-Investor Owned Utility Wholesale Sector** - generation and transmission cooperatives and municipal joint action agencies that sell electricity to non-investor owned Load Serving Entities with native load in the FRCC Region.

(c) **Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates less than 25% of its energy requirements for retail sales or has an annual Full Requirements Energy for Load (FREL) of 1800 GWH or less in the FRCC Region.

(d) **Generating Load Serving Entity Sector** - any Load Serving Entity that is not investor owned and that generates at least 25% of its energy requirements for retail sales, and that has an annual Full Requirements Energy for Load (FREL) greater than 1800 GWH in the FRCC Region.

(e) **Investor Owned Utility Sector** - investor owned utilities generating and serving retail native load greater than 15,000 GWH in the FRCC Region.

(f) **General Sector** - persons or entities that take delivery of energy within the FRCC Region that is not purchased for resale; agents or associations representing groups of such entities that are commercial or industrial entities; agents or advocate groups representing small customers; and other persons or entities owning assets or engaging in commercial activities in the FRCC Region.

**Section 1.3 Affiliate Member.** An Affiliate Member is defined as an entity that (i) otherwise qualifies as a Voting Member pursuant to Section 1.1 and 1.2 and (ii) is an Affiliate of a Voting Member. For purposes of these Bylaws, being an “Affiliate” shall mean that (1) a Voting Member controls, is controlled by or is under common control with, such Affiliate Member, and (2) for any exempt wholesale generator, as defined the Public Utility Holding Company Act of 2005, as amended, the meaning provided in Section 214 of the Federal Power Act. Affiliate Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Affiliate Members shall be bound by the same obligations as Voting Members and Adjunct Members of FRCC. Questions as to whether an entity is an Affiliate of a Voting Member shall be resolved by the Board.

**Section 1.4 Adjunct Member.** A person or entity may be approved as an Adjunct Member by the Board if such entity has a material interest in the reliability of the bulk power system in the FRCC region but does not meet the definitions and requirements to join as a Voting Member or Affiliate Member. Adjunct Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Except as to funding, Adjunct Members shall be bound by the same obligations as Voting Members and Affiliate Members of FRCC.

**Section 1.5 New Members.** The Board shall review and act upon membership applications. Prior to membership, the Board shall certify that an applicant complies with the eligibility requirements.

**Section 1.6 Membership Commitment.** Each Member of the FRCC shall be required to execute, in counterpart, a Member Agreement, as applicable, in the form shown in Appendix A to these Bylaws.

### **Section 1.7 Obligations.**

(a) Each Member of the FRCC shall promote, support and comply with the purposes and policies of the FRCC as set forth in its Certificate of Incorporation and Bylaws, and the other documents governing the activities of FRCC identified in the Bylaws.

(b) Each Member of the FRCC shall appoint a representative as provided herein to receive notices from the FRCC and shall give to the FRCC Chief Executive Officer (“CEO”) in writing (signed by a duly authorized representative of the Member) the name, business address and electronic address of the person thus appointed. An appointed representative of a Member who is unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Member.

## **Section 1.8 Participation.**

(a) For purposes of these Bylaws, an entity and all of its Affiliates shall be considered one "Entity." No Entity shall simultaneously hold more than one Voting Member status or have more than one voting representative on a Standing Committee, or more than one seat on the Board.

(b) An Entity may join FRCC in any Sector in which it qualifies for Membership, provided that an Entity may join as a Voting Member in only one Sector. In the event that an Entity qualifies for more than one Sector, such Entity may join such other Sectors as an Affiliate Member upon payment of any applicable Affiliate Member Annual Fees [in accordance with Article VI Section 6.2-\(b\)-\(ii\)](#) for each Sector in which such Entity desires to participate as an Affiliate Member. Once an Entity has elected to be a Voting Member of one Sector, the Entity must continue to vote in that Sector for a minimum of one (1) year. If, at any point, it is determined that an Entity no longer meets the qualifications for the Sector it selected, the Entity may not vote in that Sector; however, that Entity may then immediately elect to become a Voting Member in any Sector for which it does qualify. Questions as to whether an Entity meets the qualifications of a Sector shall be resolved by the Board.

(c) Subject to the requirements of these Bylaws and the Articles of Incorporation, each Voting Member in good standing is entitled to vote on each matter submitted to a vote of the Voting Members. A Member in good standing is one that (i) meets all qualifications for membership as provided in these Bylaws, (ii) is not in arrears for payment of any applicable annual fees for membership or payment of any other fees owed to FRCC unless such payment is being disputed in good faith, and (iii) has not been found by a court to be in breach of any contract with FRCC. Voting Members that are not in good standing are not entitled to vote on any matter until they have regained good standing.

## **ARTICLE II**

### **Meetings of Voting Members**

**Section 2.1 Annual Meeting of Voting Members.** Voting Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). The Voting Members from each Sector shall elect, by majority vote, each Voting Member having one (1) vote, Directors to the Board who will represent their Sector. The Voting Members shall conduct such other business as may be properly brought before them. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. The Annual Meeting shall be open to Affiliate Members and Adjunct Members, and such other invitees as the Board may deem appropriate, provided that the Services Members, along with Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), may meet separately to consider matters relating to Member Services.

**Section 2.2 Special Meetings.** Special meetings of the Voting Members, for any purpose or purposes, unless otherwise prescribed by the laws of the State of Florida, or by the

Articles of Incorporation, may be called by the Chair of the Board. Special meetings of the Regional Entity Members shall be called upon request of six (6) or more Voting Members representing three (3) or more Sectors. Special meetings of the Services Members shall be called upon request of six (6) or more Voting Members that are Services Members representing three (3) or more Sectors. Notice of a special meeting stating the place, date, hour and agenda for the special meeting shall be given to the Voting Members not less than three (3) business days before the meeting. Such request for a special meeting shall state the purpose or purposes of the proposed special meeting, which shall be included as part of an agenda to be distributed to the Voting Members not less than three (3) business days before the meeting. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other.

**Section 2.3 Place of Meeting.** All meetings shall be held at or near the principal office of the FRCC in Tampa, Florida, or at such other place within or outside the State of Florida as shall be determined from time to time by the Board.

**Section 2.4 Notice of Meetings.**

(a) Notice of the Annual Meeting or any regular or special meeting of the Voting Members shall be sent by mail or electronic means to each Member's representative at the business or electronic address specified in accordance with Section 1.7(b) at least ten (10) business days before the date of the meeting. The notice shall set forth a proposed agenda for the meeting, but any matter may be considered and acted upon at any meeting, whether or not the matter was listed in the proposed agenda, if addition of the item to the agenda is approved at the meeting by the vote of the eligible Voting Members whose votes equal sixty percent (60%) or more of the total weighted sector vote of the eligible Voting Members; provided, however, that at least three (3) Sectors are represented in the affirmative. Meetings may be held at any time without notice if all of the eligible Voting Members are present, or if those not present waive notice in writing either before or after the meeting.

(b) The record date for determining Members entitled to notice shall be one month prior to the meeting date.

**Section 2.5 Quorum.** Representation at any meeting of the Regional Entity Members of more than 50% of the Voting Members, or representation at any meeting of the Services Members of more than 50% of the Voting Members that are Services Members, shall constitute a quorum for the transaction of business at such meeting; provided, however, that in each case at least four (4) eligible Sectors are represented.

**Section 2.6 Voting.** Voting by Voting Members shall be by the six (6) Sectors as defined in Section 1.2, except as otherwise provided herein. Each Voting Member within a Sector has one non-divisible vote. Each Sector shall have a “Sector Vote” in proportion to the voting rights specified in Section 3.2(e), which is to be split into an affirmative and a negative component, in the proportion that each component bears to the total votes of the Voting Members within that Sector. Action by the Voting Members shall require affirmative Sector Votes greater than 6.50.

**Section 2.7 Action without Meeting.** Any action that may be taken at a meeting of the Regional Entity Members or the Services Members may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed by all Voting Members eligible to vote in such meeting before the action is taken.

**Section 2.8 Remote Attendance.** Any Member otherwise eligible may participate in any meeting by telephone, videoconference communications equipment, or other means enabling all persons participating in the meeting to communicate with each other. A Member participating in a meeting by such means shall be deemed present in person at such meeting.

**Section 2.9 Termination of Members.**

(a) A Member may be terminated for non-payment of fees or monies due FRCC as provided in Section 6.3, or for a significant violation of obligations as set forth in Section 1.7. The Board may, by resolution, establish a fair and reasonable procedure to terminate a Member.

(b) A Member whose membership has been terminated shall be liable to FRCC for fees and any other monies due FRCC as a result of obligations incurred or commitments made prior to termination.

**Section 2.10 Withdrawal.** Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of FRCC at any time upon written notice to the CEO, whereupon it shall cease to be a Member and shall cease to be entitled or obligated to participate in the activities of the Board, Standing Committees, or any subcommittees, and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of fees and expenses for a fiscal year, the Member shall be obligated to pay its fees and other monies due to FRCC for the full fiscal year within which such termination is effective.

**Section 2.11 Reinstatement.** A former Member shall be required to apply for Membership as set forth in Section 1.1. The Board may reinstate Membership on any reasonable terms that the Board deems appropriate.

**Section 2.12 Property Ownership and Control.** Subject to applicable laws, rules, regulations, agreements, and FRCC protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction, maintenance and operation of its own facilities, present and future. A Member has no interest in the property of FRCC and waives the right to require a partition of any FRCC property.

## **ARTICLE III**

### **Board of Directors**

**Section 3.1 Powers.** The affairs of FRCC shall be managed by the Board of Directors ("Board"). The Board may exercise all such powers of the FRCC and do all such lawful acts and things as are not prohibited by the laws of the State of Florida, by the Federal Power Act, by the Articles of Incorporation or by these Bylaws.

#### **Section 3.2 Number, Election, Tenure and Governance.**

(a) Number. The Board shall include (16) Directors allocated among the Sectors as follows, and such other Directors as provided in by Section 3.2(b)(4):

- (1) Suppliers Sector- three (3) Directors
- (2) Non-Investor Owned Utility Wholesale Sector - two (2) Directors
- (3) Load Serving Entity Sector-
  - Municipal - one (1) Director
  - Cooperative - one (1) Director
- (4) Generating Load Serving Entity Sector - three (3) Directors

- (5) Investor Owned Utility Sector - Three (3) Directors
- (6) General Sector - Two (2) Directors
- (7) The CEO of FRCC - an ex-officio non-voting Director.

(b) Election.

(1) Directors, with the exception of the CEO, shall be elected as described herein.

(2) Within each Sector, only Voting Members from a given Sector may elect Directors for that Sector.

(3) Within the Load Serving Entity Sector, Director(s) representing 0.5 votes shall all be from a municipal and Director(s) representing 0.5 votes shall be from a cooperative.

(4) Within each Sector, Voting Members from a given Sector may, by majority vote, elect additional Directors subject to a maximum of five (5) Directors representing such Sector. The total votes of the Directors for such Sector shall not exceed the total votes of the Directors of such Sector specified in Section 3.2(a).

(c) Alternate Director. Any Director unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Director.

(d) Term. The term for all Directors shall be two (2) years. Any Director may be reelected for consecutive terms, without limitation. Directors within a Sector shall have staggered terms as determined by the Sector.

(e) Voting Rights.

(1) Except as provided for in subsections (2) and (3) below, each Sector shall have the number of votes as specified below:

• Suppliers Sector	2.5 Votes
• Non-Investor Owned Utility Wholesale Sector	2.0 Votes
• Load Serving Entity Sector	
- Municipal	0.5 Votes
- Cooperative	0.5 Votes
• Generating Load Serving Entity Sector	3.0 Votes
• Investor Owned Utility Sector	3.5 Votes
• General Sector	1.0 Vote
Total	13.0 Votes

(2) Each Director, as defined in Section 3.2(a) and 3.2 (b), shall have an equal proportional vote of that Sector's total voting strength. This provision shall



apply separately to the municipal and cooperative Directors of the Load Serving Entity Sector.

- (3) If the majority of the Voting Members of a Sector are Services Members, Directors elected by that sector shall be deemed "Services Member Directors." Only Services Member Directors shall be eligible to vote on questions governing Member Services or Member Services Activities. Deliberations on such matters may be limited to Services Member Directors, Voting Members that are Services Members, and Affiliate and Adjunct Members that have paid the fees specified in Section 6.2(b)(ii) or (iii), upon the vote of the Services Member Directors.
- (4) The CEO of FRCC shall not have a vote.

(f) **Limitations.** Each person or alternate serving on the Board shall be a representative of a Voting Member. Unless otherwise provided in these Bylaws, if a representative of a Voting Member is elected to serve on the Board, such person shall only be eligible to serve in such capacity so long as such person remains the representative of said Voting Member. A Voting Member shall not have more than one (1) officer, employee or agent serving as a Director.

**Section 3.3 Meetings.** Regular meetings of the Board shall be held at such times and places, within or outside the State of Florida, as may be determined by the Board. Special meetings of the Board may be called by the Chair. Special meetings shall be called upon request of six (6) or more Directors. Regular or Special Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. Except as specified in Section 3.2(e)(3), the meetings of the Board shall be open to all Members, and such other invitees as the Board may deem appropriate. The Board may meet in closed session to discuss matters of a confidential nature, including but not limited to personnel matters, litigation, or commercially sensitive information of any person or entity.

**Section 3.4 Notice of Meetings.** Notice of any regular or special meeting of the Board shall be sent by mail or electronic means to each Director, and to each Member, at such Director's and Member's usual place of business at least (ten) 10 business days, in the case of a regular meeting, or (five) 5 business days, in the case of a special meeting, before the date of the meeting. Such notice shall also be sent to the observers of the Board specified in Section 8.1. The notice shall set forth a proposed agenda for the meeting. Subject to the requirements of Section 3.2(e)(3), no agenda item may be added to the agenda at any meeting of the Board which requires action by the Board unless all Directors are present and all agree to allow such an item to be put to a vote. Meetings may be held at any time without notice if all of the Directors of the Board are present, or if those not present waive notice in writing either before or after the meeting.

**Section 3.5 Quorum.** The presence at a meeting of the Directors whose votes equal sixty percent (60%) or more of the total voting strength of the Board, or in the case of matters governed by Section 3.2(e)(3), votes equal to sixty percent (60%) or more of the total voting

strength of the Directors eligible to vote, shall constitute a quorum for any action of the Board, provided, however, that in each case at least one Director from at least four (4) Sectors are present. If at any meeting a quorum shall fail to attend, a majority of those Directors present at the meeting may adjourn that meeting without further notice until a quorum shall attend. Once a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**Section 3.6 Voting.** Action by the Board shall require approval of sixty percent (60%) or more of the total eligible voting strength of the Board.

**Section 3.7 Remote Attendance.** Directors shall be deemed present and voting at a meeting of the Board if participating in the meeting by means of a conference telephone, video conferencing, or other means enabling all persons participating in the meeting to communicate with each other.

**Section 3.8 Action without Meeting.** Any action that may be taken at a meeting of the Board may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed before the action by all Directors eligible to participate in such action.

**Section 3.9 Vacancies and Removal.** A Director may be removed with cause at any time by an affirmative vote of 60% of the Voting Members of the Sector that elected that Director. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the remaining total voting strength of the Board. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner. A vacancy may be filled only by the Voting Members of the Sector in which the vacancy occurs. Any Director so chosen shall hold office until his or her successor is duly elected and qualified or until his or her earlier resignation, ineligibility or removal.

**Section 3.10 Officers.** At the Board of Directors meeting following the Annual Meeting of the Voting Members, the Board shall elect a Chair, Vice Chair, and Secretary-Treasurer, who shall be the officers of the FRCC. No two officers of FRCC shall be officers, employees or agents of Voting Members of the same Sector or its Affiliates. The CEO of FRCC may not be elected to act as Chair, Vice-Chair or Secretary/Treasurer.

(a) **Term of Office.** Each officer of the Board of Directors shall hold office for two (2) fiscal years, and until his or her successor is duly elected and qualified.

(b) **Removal of Officers.** Any officer of the Board of Directors may be removed with or without cause at any time by the affirmative vote of seventy percent (70%) of the total voting strength of the Board.

(c) **Compensation.** There shall be no compensation paid to any officer of the Board of Directors of FRCC, provided that an officer serving on the staff of FRCC may be compensated for their services on the staff of FRCC.

### **Section 3.11 Responsibilities of Board of Director Officers**

(a) Chair. The Chair shall serve as the Chair of the Board. The Chair shall preside at all meetings of the Members and Board, provided that, if the Chair is not eligible to vote in a meeting governed by Section 3.2(e)(3), the Directors that are eligible shall select one of the number to preside at such meeting. The Chair shall be responsible for the preparation of the agenda for all meetings of the Members and Board. The Chair shall be a member of and preside over a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(b) Vice Chair. The Vice Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair, subject to the provisions of Section 3.11(a), and shall perform such other duties and have such other powers as the Board may from time to time prescribe. The Vice Chair shall be a member of a Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

(c) Secretary-Treasurer. The Secretary-Treasurer shall be responsible to assure that the FRCC staff has adequate procedures to distribute the agenda of the meetings of the Voting Members and the Board, keep the minutes of the proceedings of said meetings, and maintain the financial books and records of the FRCC, including disbursement of the funds of the FRCC in accordance with the authorized annual budget. The Secretary-Treasurer shall be a member of the Personnel and Compensation Committee, which shall have responsibilities for such matters relating to staff.

**Section 3.12 Vacancy.** Any vacancy in a Board of Director Officer occurring for any reason shall be filled as specified in Section 3.9.

## **ARTICLE IV**

### **Chief Executive Officer**

**Section 4.1 CEO.** The Board shall hire the CEO who, under the Board's direction, shall carry on the general affairs of the FRCC. The CEO shall be a member of the staff of FRCC and shall be a non-voting Director. It shall be the CEO's duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of FRCC. The CEO shall serve as President of FRCC. The CEO shall comply with all directives of the Board. All agents and employees shall report, and be responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

## **ARTICLE V**

### **Standing Committees**

**Section 5.1 Standing Committees.** There shall be a Planning Committee, an Operating Committee, a Compliance Committee, and such other committees, subcommittees,

and task forces as the Board may appoint, when deemed necessary to carry out the purposes of the FRCC.

**Section 5.2 Planning Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Planning Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Planning Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Planning Committee shall report directly to the Board and is charged with the responsibility of promoting the reliability of the bulk power system in the FRCC Region, and assessing and encouraging generation and transmission adequacy. The Planning Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.3 Operating Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Operating Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Operating Committee. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Operating Committee shall report directly to the Board and is charged with responsibility for the coordination, operations planning, operation and maintenance of the bulk power system in the FRCC Region. The Operating Committee may establish subcommittees and task forces as deemed necessary by its membership.

**Section 5.4 Compliance Committee.** Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Compliance Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Quorum and Voting Rights shall be as defined in Sections 5.7 and 5.8. The Compliance Committee shall report directly to the Board and is charged with responsibility for the development and implementation of programs to ensure compliance for both FRCC Regional Reliability Standards and NERC Reliability Standards. [The Compliance Committee is not to be confused with the Board Compliance Committee which is primarily a “hearing body” and has a different voting structure as outlined in Exhibit D of the Delegation Agreement between the North American Electric Reliability Corporation and FRCC.](#)

**Section 5.5 Rules of Procedure.** Each Standing Committee shall set its rules of procedure, provided that quorum, voting rights and voting shall be as specified in Sections 5.7 and 5.8. Such Rules of Procedure shall be as approved by the Board. All action by any Standing Committee shall be reported as prescribed herein and shall be subject to revision, alteration and approval by the Board.

**Section 5.6 Quorum.** Representation at any meeting of a Standing Committee of sixty percent (60%) or more of the total voting strength of the Standing Committee shall constitute a quorum for the transaction of business at such meeting; provided, however, that action on matters dealing with the scope or funding of Member Services shall require sixty percent (60%) or more of the total voting strength of members of the Standing Committee

representing Voting Members that are Services Members; and provided further that a quorum shall require that at least three (3) Sectors are represented, all three of which shall be Sectors a majority of the members of which are Services Members in the case of a quorum for action on matters governing Member Services.

**Section 5.7 Voting. Voting is by Sector.** Each voting representative present at a meeting is assigned a vote equal to the voting strength of his or her Sector, as provided in this section, divided by the number of voting representatives present in that Sector, except that no voting representative present at a meeting shall have more than one (1) vote, except an Investor Owned Utility Sector voting representative who may have up to 1.167 votes. Action by a Standing Committee shall require an affirmative vote equal to or greater than sixty percent (60%) of the total eligible voting strength of the Standing Committee.

Sector Votes

(1) Suppliers Sector	2.5 Votes
(2) Non-Investor Owned Utility Wholesale Sector	2.0 Votes
(3) Load Serving Entity Sector	
Municipal	0.5 Vote
Cooperative	0.5 Vote
(4) Generating Load Serving Entity Sector	3.0 Votes
(5) Investor Owned Utility Sector	3.5 Votes
(6) General Sector	1.0 Vote
Total	13.0 Votes

Only representatives of Voting Members that are Services Members shall be eligible to vote on questions governing Member Services.

**Section 5.8 Meetings.** Regular meetings of the Standing Committees shall be held at such times and places, within or outside the State of Florida, as may be determined by the Standing Committees. Special meetings of the Standing Committees may be called by the Chair or upon the request of representatives from three (3) different Sectors. Regular or Special Meetings may be held by telephone conferencing, video conferencing, or by other means enabling all participants in the meeting to communicate with each other. The meetings of the Standing Committees shall be open to all Members, and such other invitees as the Board may deem appropriate.

**ARTICLE VI**

**General Provisions**

**Section 6.1 Budget.** The Board shall annually adopt a budget for the FRCC for administrative expenses of the FRCC, including salaries, and for the costs associated with the various committees, subcommittees, professional services, projects and studies. The Board shall approve the scope and funding of Member Services, in accordance with the provisions of these

Bylaws. The funding for Member Services special projects approved by the Board may be based on a special funding, with an equitable allocation of the costs for the special project as approved by the Board. The budget may be amended from time to time during the fiscal year as determined by the Board, subject to the filing and approval requirements applicable to FRCC as a Regional Entity under the Delegation Agreement.

## **Section 6.2 Funding.**

(a) The funding of FRCC's Regional Entity Activities shall be in accordance with the provisions of Exhibit E and the section numbered eight (8) of the Delegation Agreement.

(b) The Member Services of FRCC shall be funded through an allocation of their costs to all Members that are Services Members in accordance with the provisions of subsections 6.2(b)(i) - (iii) below. The funding of all Member Services shall be kept separate from the funding of Regional Entity Activities as specified in the Business Plan and Budget.

(i) **Services Members.** The allocation for Voting Members that are Services Members shall be based on the following calculation; provided, however, that in no event shall the allocation be less than \$20,000 per annum.

$$\text{Services Member Allocation} = 0.25 (1/N) + 0.25 (B/C) + 0.25 (D/E) + 0.25 (F/G)$$

- N Total number of voting Services Members
- B Voting Services Member's previous-year Full Requirements Energy for Load (FREL) within the FRCC
- C Total of factor B for all voting Services Members
- D Voting Services Member's Net Summer Generating Capacity within the FRCC Region as of December 31 of the previous year, as defined in the FRCC Load and Resource Plan
- E Total of factor D for all voting Services Members
- F Sum of Circuit Miles of Transmission Facilities (69kV and above) of voting Services Members within the FRCC Region times the respective operating voltage as of December 31 of the previous year
- G Total of factor F for all voting Services Members

**Full Requirements Energy for Load (FREL)** The net electrical energy requirements of the Services Member's electric system, and the net electric energy requirements of all full requirements customers of the Services Member, except if a full requirements customer of a Services Member joins FRCC. In such case, the electrical energy requirements of such full requirements customer will only be counted for the funding calculation for that Services Member who is the full requirements customer, and not for the Services Member who is the supplier of the full requirements. There should be no double counting of FREL between Services Members.

**Net Summer Generating Capacity** The maximum summer rated capacity,

modified for ambient limitations, that a generating unit can sustain over a specified period, less the capacity used to supply the demand of station service or auxiliary needs. For jointly owned units, the Net Capacity will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

**Circuit Miles of Transmission Facilities** The distance (following the path of transmission facility) in miles between substations or switching stations times the number of circuits at the same voltage level. For jointly owned transmission facilities, the Circuit Miles of Transmission Facilities will be allocated based on the ownership share of each Services Member who is a joint owner, unless otherwise mutually agreed by the joint owner Services Members.

(ii) Affiliate Members. The fee for an Affiliate Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Affiliate Member, s only participating in Regional Entity Activities, ~~shall be as specified in the Business Plan and Budget.~~ is shall be waived.

(iii) Adjunct Members. The fees for an Adjunct Member that wishes to participate in Member Services activities shall be \$5,000 per annum. The fee for an Adjunct Member, s only participating in Regional Entity Activities, ~~shall be as specified the Business Plan and Budget.~~ is shall be waived.

**Section 6.3 Fees.** The Member Services membership fee shall be due and payable concurrent with the submission of the written application for membership. The initial membership fee will be prorated on an annual basis depending upon the quarter in which a Member joins. Thereafter, membership fees shall be due and payable on or before January 1st of each year or in installments as determined by the Board. The FRCC shall notify, in writing, any Member who is delinquent in the payment of any applicable membership fee. The notice shall provide a time certain, not to exceed thirty days (30) days from the date of the written notice, during which any such delinquency may be cured. Failure to cure a delinquency within the stated time will result in the loss of all membership rights and designations. In the event of an uncured lapse in the payment of a fee, membership in the FRCC shall be terminated.

**Section 6.4 Staff.** The FRCC shall employ a staff, including the CEO, to carry out the objectives of the organization. The CEO shall be a non-voting Director of the Board. The duties of the CEO are as defined in Article IV, Section 4.1.

**Section 6.5 Expenses.** The personal expenses of each Member and Director participating in the activities of the FRCC and its committees and subcommittees shall be borne by the Member on whose behalf such person is acting, unless determined otherwise by the Board.

**Section 6.6 Minimum Sector Membership.** If the number of Voting Members of a Sector is not greater than one (1), such Sector shall not be entitled to a vote at the Voting Members meetings, Board of Directors meetings, or the Standing Committee meetings.

**Section 6.7 Indemnification.** The FRCC shall indemnify and hold harmless, to the maximum extent permitted by law, any Member, Director, Member representative, agent, officer or employee of the FRCC and the heirs, estates, successors or assigns of any of them, from any and all claims or liabilities, including costs or attorneys' fees for defending against assertion of any such claim or liability, arising from any act or failure to act of such person for, on behalf of, or at the direction of the FRCC, unless such act or failure to act constituted a willful violation of state, federal or local law, willful misconduct, or gross negligence. With the approval of the Board, the FRCC may reimburse costs, attorneys fees, and other expenses for defending against assertions of any such claims or liabilities prior to the final disposition of any such proceeding. The foregoing rights to be indemnified, held harmless, or reimbursed shall not operate in derogation or prohibition of any other rights which the person indemnified, held harmless or reimbursed may have. The FRCC, by vote of the Board, shall purchase insurance against all or any part of the liabilities which may be incurred by the FRCC and may cause the FRCC to indemnify and hold harmless as and to the extent it may deem appropriate such other person or persons as it may deem appropriate.

**Section 6.8 Fiscal Year.** The fiscal year of the FRCC shall be the twelve (12) month period of January 1<sup>st</sup> through December 31<sup>st</sup>.

**Section 6.9 Depositories.** All funds of the FRCC shall be deposited in the name of the FRCC in such bank, banks or other financial institutions as the CEO shall from time to time designate and shall be drawn out on checks, drafts or other orders signed on behalf of the FRCC by such person or persons as the Board shall from time to time designate.



## ARTICLE VII

### Amendments

**Section 7.1 Amendments.** Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership, subject to the provisions of Section 1.2, and subject to the requirements for approval by NERC and the Federal Energy Regulatory Commission applicable to the FRCC as a Regional Entity, these Bylaws may be amended, altered, or repealed through the following procedure:

(a) Any Voting Member or Director may suggest amendments to these Bylaws. Such suggestions must include a proposed amendment, and any necessary supporting documents. They should be sent to the CEO of FRCC for placement on the agenda for a Board meeting in the time and manner prescribed by the Board.

(b) If the proposal is approved by the Board of Directors, the Board shall place the proposal on the agenda of either the next Annual Meeting of the Voting Members, or pursuant to Board discretion, at a Special Meeting of the Voting Members called for that purpose.

(c) Voting Members shall vote to enact the Board-approved amendment in accordance with Sections 2.5 and 2.6, and subject to the provisions of Section 1.2 of the Bylaws.

**Section 7.2 Review of Governance.** The Board shall appoint a task force to review these Bylaws, and to submit recommendations to the Board on necessary amendments, at the discretion of the Board or if any of the following events occurs. Such task force shall include representation from each Sector.

(a) The number of Voting Members in a Sector is not greater than one (1).

(b) A Regional Transmission Organization of any type is approved by the Federal Energy Regulatory Commission to operate in the FRCC Region.

(c) Any federal or state legislation or regulatory action that significantly alters the functions of the FRCC.

(d) Any new entity that has or is expected to have financial transactions in the wholesale electric market in the FRCC Region wishes to join the FRCC, and does not otherwise meet the membership requirements as then defined in these Bylaws.

## ARTICLE VIII

### Observers of the Board

**Section 8.1 Observers of the Board.** The Chairman of the Florida Public Service Commission, or designee, shall be invited to attend meetings of the Board. The Board shall invite other observers as the Board deems appropriate.

## ARTICLE IX

### Audit

**Section 9.1 Audit.** The Board shall engage a certified public accounting firm to audit the books and accounts of the FRCC for each fiscal year.

## ARTICLE X

### Miscellaneous Provisions

**Section 10.1 Headings.** The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

**Section 10.2 Number and Gender.** All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.

**Section 10.3 Parties Bound.** These Bylaws will bind and inure to the benefit of any Members, Director, Member representative, agent, officer, or employee of the FRCC and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

**Section 10.4 Minority Positions.** Any Voting Member or Standing Committee Representative who has a minority opinion on any significant issue may present the minority opinion to the Board in a manner as prescribed by the Board.

Amended: ~~September~~ June 25 27, 20078

**APPENDIX A**

**Voting Member Agreement - Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Voting Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Voting Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_  
(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Affiliate Member Agreement – Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Affiliate Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Affiliate Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_

(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**APPENDIX A**

**Adjunct Member Agreement — Division**

\_\_\_\_\_, hereby agrees to comply with and be bound by, and to

(Adjunct Member)  
promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Adjunct Member taken or entered into in accordance with the foregoing documents.

\_\_\_\_\_  
(Name)

DATE: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

## **HISTORY OF REVISIONS**

**January, 1998**

**Amended December 19, 2001**

**Amended March 2, 2006**

**Amended September 25, 2007**

**Amended June 27, 2008**

## Exhibit C – Regional Standard Development Procedure

Exhibit C shall set forth the Regional Entity’s standards development procedure, which NERC agrees meets the following common attributes:

### COMMON ATTRIBUTE 1

Proposed regional reliability standards shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA [add reference to any applicable authorities in Canada and Mexico]. No regional reliability standard shall be effective within the [Regional Entity Name] area unless filed by NERC with FERC [and applicable authorities in Canada and Mexico] and approved by FERC [and applicable authorities in Canada and Mexico].

### COMMON ATTRIBUTE 2

[Regional Entity Name] regional reliability standards shall provide for as much uniformity as possible with reliability standards across the interconnected bulk power system of the North American continent. A [Regional Entity Name] reliability standard shall be more stringent than a continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not, or shall be a regional difference necessitated by a physical difference in the bulk power system. A regional reliability standard that satisfies the statutory and regulatory criteria for approval of proposed North American reliability standards, and that is more stringent than a continent-wide reliability standard, would generally be acceptable.

### COMMON ATTRIBUTE 3

[Regional Entity Name] regional reliability standards, when approved by FERC [add applicable authorities in Canada], shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the [Regional Entity Name] area, regardless of membership in the region.

### COMMON ATTRIBUTE 4

**Requester** — The requester is the sponsor of the regional reliability standard request and may assist in the development of the standard. Any member of [Regional Entity Name], or group within [Regional Entity Name] shall be allowed to request that a regional reliability standard be developed, modified, or withdrawn. Additionally, any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the bulk power system in the [Regional Entity Name] area shall be allowed to request a regional reliability standard be developed, modified, or withdrawn.

## **COMMON ATTRIBUTE 5**

**[Standards or other named] committee** — The [Regional Entity Name] [standards] committee manages the standards development process. The [standards] committee will consider which requests for new or revised standards shall be assigned for development (or existing standards considered for deletion). The [standards] committee will advise the [Regional Entity Name] board on standards presented for adoption.

## **COMMON ATTRIBUTE 6**

*[Alternative 6A: For a Regional Entity that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee is a balanced stakeholder committee, inclusive of all stakeholder interests that provide for or are materially impacted by the reliability of the bulk power system. [The [standards] committee votes to approve standards.] See Appendix A for the representation model of the [standards] committee.

*[Alternative 6B: For a Regional Entity that chooses to vote using a balanced ballot body of stakeholders.]*

**[Registered ballot body]** — The registered ballot body comprises all entities or individuals that qualify for one of the stakeholder segments; are registered with [Regional Entity Name] as potential ballot participants in the voting on standards; and are current with any designated fees. Each member of the registered ballot body is eligible to vote on standards. [Each standard action has its own ballot pool formed of interested members of the registered ballot body. Each ballot pool comprises those members of the registered ballot body that respond to a pre-ballot survey for that particular standard action indicating their desire to participate in such a ballot pool.] The representation model of the registered ballot body is provided in Appendix A.]

## **COMMON ATTRIBUTE 7**

[Regional Entity Name] will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the [Regional Entity Name] and NERC websites.

## **COMMON ATTRIBUTE 8**

An acceptable standard request shall contain a description of the proposed regional reliability standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed standard.



### **COMMON ATTRIBUTE 9**

Within [no greater than 60] days of receipt of a completed standard request, the [standards] committee shall determine the disposition of the standard request.

### **COMMON ATTRIBUTE 10**

The [standards] committee may take one of the following actions:

- Accept the standard request as a candidate for development of a new standard, revision of an existing standard, or deletion of an existing standard. The [standards] committee may, at its discretion, expand or narrow the scope of the standard request under consideration. The [standards] committee shall prioritize the development of standard in relation to other proposed standards, as may be required based on the volume of requests and resources.
- Reject the standard request. If the [standards] committee rejects a standard request, a written explanation for rejection will be delivered to the requester within [no greater than 30] days of the decision.
- Remand the standard request back to the requester for additional work. The standards process manager will make reasonable efforts to assist the requester in addressing the deficiencies identified by the [standards] committee. The requester may then resubmit the modified standard request using the process above. The requester may choose to withdraw the standard request from further consideration prior to acceptance by the [standards] committee.

### **COMMON ATTRIBUTE 11**

Any standard request that is accepted by the [standards] committee for development of a standard (or modification or deletion of an existing standard) shall be posted for public viewing on the [Regional Entity Name] website within [no greater than 30] days of acceptance by the committee.

### **COMMON ATTRIBUTE 12**

The standards process manager shall submit the proposed members of the drafting team to the [standards] committee. The [standards] committee shall approve the drafting team membership within 60 days of accepting a standard request for development, modifying the recommendations of the standards process manager as the committee deems appropriate, and assign development of the proposed standard to the drafting team.

### **COMMON ATTRIBUTE 13**

At the direction from the [standards] committee, the standards process manager shall facilitate the posting of the draft standard on the [Regional Entity Name] website, along with a draft implementation plan and supporting documents, for a no less than a [30]-day comment period. The standards process manager shall provide notice to [Regional Entity Name] stakeholders and other potentially interested entities, both within and outside of the [Regional Entity Name] area, of the posting using communication procedures then currently in effect or by other means as deemed appropriate.

### **COMMON ATTRIBUTE 14**

The drafting team shall prepare a summary of the comments received and the changes made to the proposed standard as a result of these comments. The drafting team shall summarize comments that were rejected by the drafting team and the reason(s) that these comments were rejected, in part or whole. The summary, along with a response to each comment received will be posted on the [Regional Entity Name] website no later than the next posting of the proposed standard.

### **COMMON ATTRIBUTE 15**

Upon recommendation of the drafting team, and if the [standards] committee concurs that all of the requirements for development of the standard have been met, the standards process manager shall post the proposed standard and implementation plan for ballot and shall announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

### **COMMON ATTRIBUTE 16**

The standards process manager shall schedule a vote by the [Regional Entity Name] [registered ballot body/[standards] committee]. The vote shall commence no sooner than [15] days and no later than [30] days following the issuance of the notice for the vote.

### **COMMON ATTRIBUTE 17**

*[Alternative 17A: For an RE that chooses to vote using a balanced stakeholder committee.]*

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards]

committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

[Alternative 17B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

The [Regional Entity Name] registered ballot body shall be able to vote on the proposed standard during a period of [not less than 10] days.

### **COMMON ATTRIBUTE 18**

[Alternative 18A: For an RE that chooses to vote using a balanced stakeholder committee.]

The [standards] committee may not itself modify the standard without issuing a new notice to stakeholders regarding a vote of the modified standard.

[Alternative 18B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

All members of [Regional Entity Name] are eligible to participate in voting on proposed new standards, standard revisions or standard deletions. [Alternatively: Each standard action requires formation of a ballot pool of interested members of the registered ballot body.]

### **COMMON ATTRIBUTE 19**

[Alternative 19A: For an RE that chooses to vote using a balanced stakeholder committee.]

Actions by the committee shall be recorded in the regular minutes of the committee.

[Alternative 19B: For an RE that chooses to vote using a balanced ballot body of stakeholders.]

Approval of the proposed regional reliability standard shall require a [two thirds] majority in the affirmative (affirmative votes divided by the sum of affirmative and negative votes). Abstentions and non-responses shall not count toward the results, except that abstentions may be used in the determination of a quorum. A quorum shall mean [XX%] of the members of the [registered ballot body/ballot pool] submitted a ballot.

### **COMMON ATTRIBUTE 20**

Under no circumstances may the board substantively modify the proposed regional reliability standard.

### COMMON ATTRIBUTE 21

Once a regional reliability standard is approved by the board, the standard will be submitted to NERC for approval and filing with FERC [and applicable authorities in Canada and Mexico.]

### COMMON ATTRIBUTE 22

- **Open** - Participation in the development of a regional reliability standard shall be open to all organizations that are directly and materially affected by the [Regional Entity Name] bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in [Regional Entity Name], and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to the [Regional Entity Name] members and others.

### COMMON ATTRIBUTE 23

- **Balanced** - The [Regional Entity Name] standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

### COMMON ATTRIBUTE 24

- **Inclusive** — Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system in the [Regional Entity Name] area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

### COMMON ATTRIBUTE 25

- **Fair due process** — The regional reliability standards development procedure shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

### **COMMON ATTRIBUTE 26**

- **Transparent** — All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

### **COMMON ATTRIBUTE 27**

- Does not unnecessarily delay development of the proposed reliability standard.

### **COMMON ATTRIBUTE 28**

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional bulk power system. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

### **COMMON ATTRIBUTE 29**

While reliability standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that bulk power system reliability and electricity markets are inseparable and mutually interdependent, all regional reliability standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

### **COMMON ATTRIBUTE 30**

To ensure uniformity of regional reliability standards, a regional reliability standard shall consist of the elements identified in this section of the procedure. These elements are intended to apply a systematic discipline in the development and revision of standards. This discipline is necessary to achieving standards that are measurable, enforceable, and consistent.

### **COMMON ATTRIBUTE 31**

All mandatory requirements of a regional reliability standard shall be within the standard. Supporting documents to aid in the implementation of a standard may be referenced by the standard but are not part of the standard itself.

### **COMMON ATTRIBUTE 32**

<b>Applicability</b>	<p>Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.</p> <p>If not applicable to the entire [Regional Entity Name] area, then a clear identification of the portion of the bulk power system to which the standard applies.</p> <p>Any limitation on the applicability of the standard based on electric facility requirements should be described.</p>
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### **COMMON ATTRIBUTE 33**

<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
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### **COMMON ATTRIBUTE 34**

<b>Compliance Monitoring Process</b>	<p>Defines for each measure:</p> <ul style="list-style-type: none"><li>• The specific data or information that is required to measure performance or outcomes.</li><li>• The entity that is responsible for providing the data or information for measuring performance or outcomes.</li><li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li><li>• The entity that is responsible for evaluating data or</li></ul>
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	<p>information to assess performance or outcomes.</p> <ul style="list-style-type: none"><li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li><li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li><li>• Violation severity levels.</li></ul>
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EXHIBIT C  
TO PRO FORMA DELEGATION AGREEMENT

**FRCC REGIONAL RELIABILITY STANDARD  
DEVELOPMENT PROCESS**

*Amended September 25, 2007*



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# I. Introduction and Background

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## *Purpose*

This manual establishes the process for development, revision, withdrawal and approval of FRCC Regional Reliability Standards for the FRCC Region. FRCC Regional Reliability Standards apply to the reliability planning and reliable operation of the Bulk Power System in the FRCC Region. Proposed FRCC Regional Reliability Standards shall be subject to approval by the North American Electric Reliability Corporation (NERC), as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the Federal Power Act. FRCC Regional Reliability Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators and users within the FRCC Region, regardless of membership in the region.

The FRCC Regional Reliability Standards Development Process is based on providing an open and fair process that ensures all interested and affected parties have an opportunity to participate in the development of FRCC Regional Reliability Standards. Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the reliability of the FRCC Bulk Power System has a right to participate by: a) expressing a position and its basis, b) having that position considered, c) voting on and d) having the right to appeal.

## *FRCC Regional Reliability Standard Principles*

FRCC Regional Reliability Standards go beyond, add detail to, or implement NERC Reliability Standards, or cover matters not addressed in NERC Reliability Standards. FRCC Regional Reliability Standards shall not be inconsistent with or less stringent than NERC Reliability Standards.

FRCC Regional Reliability Standards are based on NERC's Reliability Principles and Market Interface Principles. Each FRCC Regional Reliability Standard shall enable or support one or more of NERC's Reliability Principles and must accommodate competitive electricity markets by being consistent with NERC's Market Interface Principles.

The FRCC Regional Reliability Standard Development Process defines the fair and open process for development, revision, withdrawal and approval of FRCC Regional Reliability Standards for the FRCC Region and has the following characteristics:

- **Due Process** – Any interested party, or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System has a right to participate in this process as indicated in this manual.
- **Openness** – Participation is open to any interested party or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System. Participation shall not be conditional upon membership in the FRCC. All FRCC Regional Reliability Standard development meetings will be open and noticed on the FRCC website.

- **Balance** – The FRCC Regional Reliability Standard Development Process shall have a balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

## II. FRCC Regional Reliability Standard Definition, Characteristics, and Elements

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### *Definition*

A FRCC Regional Reliability Standard defines certain obligations or requirements of all owners, operators and users of the FRCC Bulk Power System regardless of membership in the FRCC. The obligations or requirements must be material to reliability and measurable. Each obligation and requirement shall support one or more of the NERC reliability principles and shall be consistent with all of the NERC reliability and market interface principles.

FRCC Regional Reliability Standards go beyond, add detail to, or implement NERC reliability standards, or cover matters not addressed in NERC reliability standards. FRCC Regional Reliability Standards shall not be inconsistent with or less stringent than NERC reliability standards.

### *Characteristics*

A FRCC Regional Reliability Standard shall have the following characteristics:

- **Material to Reliability** - A FRCC Regional Reliability Standard shall be material to the reliability of the FRCC Bulk Power System. If the reliability of the FRCC Bulk Power System could be compromised without a particular standard or by a failure to comply with that standard, then the standard is material to reliability.
- **Measurable** - A FRCC Regional Reliability Standard shall establish technical or performance requirements that can be practically measured.
- **Relative to NERC Reliability Standards** - A FRCC Regional Reliability Standard must go beyond, add detail to, or implement NERC reliability standards, or cover matters not addressed in NERC reliability standards.

Although FRCC Regional Reliability Standards have a common format and process, several types of Reliability Standards may exist, each with a different approach to measurement:

- **Technical standards** related to the provision, maintenance, operation, or state of Bulk Power System will likely contain measures of physical parameters and will often be technical in nature.
- **Performance standards** related to the actions of entities providing for or impacting the reliability of the FRCC Bulk Power System will likely contain measures of the results of such actions, or the nature of the performance of such actions.
- **Preparedness standards** related to the actions of entities to be prepared for conditions that are unlikely to occur but are critical to reliability will likely contain measures of such preparations or the state of preparedness.

## *Elements*

A FRCC Regional Reliability Standard shall consist of the elements identified in this section of this manual. These elements are intended to apply a systematic discipline in the development and revision of Reliability Standards. The format allows a clear statement of the purpose, requirements, measures, and compliance elements associated with each Reliability Standard. Supporting documents to aid in the implementation of a Reliability Standard may be referenced by the Reliability Standard but are not part of the Reliability Standard itself.

### Performance Elements of a FRCC Regional Reliability Standard

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference.
<b>Title</b>	A brief, descriptive phrase identifying the topic of the Reliability Standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions.  If not applicable to the entire FRCC, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
<b>Effective Date and Status</b>	The effective date of the Reliability Standard or, the proposed effective date.
<b>Purpose</b>	The purpose of the Reliability Standard. The purpose shall explicitly state what outcome will be achieved or is expected by this Reliability Standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory. Any additional comments or statements for which compliance is not mandatory, such as background or explanatory information should be placed in a separate document and referenced.
<b>Risk Factor(s)</b>	The potential reliability significance of each requirement, designated as a High, Medium or Lower Risk Factor in accordance with the criteria listed below:  A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor and control the FRCC Bulk Power System; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative

	<p>conditions anticipated by the preparations, be expected to affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor, control, or restore the FRCC Bulk Power System.</p> <p>A Medium Risk Factor requirement (a) is one that, if violated, could directly affect the electrical state or the capability of the FRCC Bulk Power System but is unlikely to lead to FRCC Bulk Power System instability, separation, or cascading failures; or (b) is a requirement in the planning time frame that , if violated, could under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the FRCC Bulk Power System, or the ability to effectively monitor and control the FRCC Bulk Power System but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to FRCC Bulk Power System instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to FRCC Bulk Power System instability, separation, or a cascading sequence of failures, or could place the FRCC Bulk Power System at an unacceptable risk of instability, separation, or cascading failures, or (b) is a requirement in a planning time frame that, if violated, could under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to FRCC Bulk Power System instability, separation, or a cascading sequence of failures, or could place the FRCC Bulk Power System at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.</p>
<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measures. Measures that will be used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure identifies to whom the measure applies and the expected level of performance or outcomes required to demonstrate compliance. Each measure shall be tangible, practical, and as objective as is practical. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>
<b>Compliance Monitoring Process</b>	<p>The compliance elements define:</p> <ul style="list-style-type: none"> <li>• The specific data or information that is required to measure performance or outcomes.</li> <li>• The entity that is responsible to provide the data or information for measuring performance or outcomes.</li> <li>• The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes.</li> </ul>

	<ul style="list-style-type: none"> <li>• The entity that is responsible for evaluating data or information to assess performance or outcomes.</li> <li>• The time period in which performance or outcomes is measured, evaluated, and then reset.</li> <li>• Measurement data retention requirements and assignment of responsibility for data archiving.</li> </ul>
<p><b>Violation Severity Levels</b></p>	<p>Defines the degree to which compliance with a requirement was not achieved. The violation severity levels, are part of the standard and are approved with the standard.</p>



### **III. Roles in the FRCC Regional Reliability Standard Development Process**

#### ***Nomination, Modification, or Withdrawal of A Regional Standard***

Any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, shall be allowed to request that a FRCC Regional Reliability Standard be developed, modified, or withdrawn. Additionally, any interested party or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System shall be allowed to request that a FRCC Regional Reliability Standard be developed, modified, or withdrawn.

#### ***Standard Development Process Roles***

**FRCC Board of Directors** – The FRCC Board of Directors shall consider for adoption as FRCC Regional Reliability Standards, those Standards that have been developed and approved by this process. Once the Board adopts a FRCC Regional Reliability Standard, such Standard shall be submitted to NERC for approval. When approved by NERC, it will be submitted to FERC for approval.

**Registered Ballot Body (RBB)** – The registered ballot body votes to approve FRCC Regional Reliability Standards. The RBB comprises all entities or persons that qualify for one of the FRCC Industry Sectors as defined in Section 1.2 of the FRCC Bylaws, and are registered with FRCC as potential ballot participants in the voting on standards. FRCC membership is not a requirement to participate in the development of and voting on FRCC Regional Reliability Standards. Any entity or person that has a material interest in the reliability of the FRCC Bulk Power System shall be allowed to register as potential ballot participants in the RBB. (See Appendix C)

**Ballot Pool (BP)** – Each standard action has its own BP formed of interested members of the RBB. The BP comprises those members of the RBB that respond to a pre-ballot survey for that particular standard that indicates their desire to participate in the ballot of that standard. The BP will vote to approve each FRCC Regional Reliability Standard.

**FRCC Operating Committee (OC) and FRCC Planning Committee (PC)** – The FRCC OC and the FRCC PC (both of which are balanced stakeholder committees, see Appendix C) shall have the primary responsibility for the development, modification or withdrawal of FRCC Regional Reliability Standards.

**FRCC Standards Process Manager** – The FRCC Regional Reliability Standard Development Process shall be administered by the FRCC Standards Process Manager. The FRCC Standards Process Manager will ensure the integrity of the process and the consistency of quality and completeness of the FRCC Regional Reliability Standards. The FRCC Standards Process Manager will facilitate all steps in this process, and will coordinate with NERC to ensure required information is posted on both NERC and FRCC websites.

**Standard Drafting Team** – A team of technical experts, such as FRCC Subcommittees, Working Groups, Task Forces, or the FRCC Staff, will be appointed by the FRCC OC and/or PC, that will:

- Develop the details of the FRCC Regional Reliability Standard,
- Consider and respond to industry comments,
- Participate in forums to help build consensus on draft FRCC Regional Reliability Standards,
- Assist in the implementation of approved FRCC Regional Reliability Standards,
- Provide technical oversight in response to changing industry conditions,
- Assist in the identification of the need for new FRCC Regional Reliability Standards.

**FRCC Compliance Staff** – The FRCC compliance staff provides input and comments during the standard development process to ensure the requirements are not ambiguous, that measures will be effective and that the compliance elements of a standard can be practically implemented.

## **IV. Steps in Developing a FRCC Regional Reliability Standard**

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### **Step 1 – Request a new FRCC Regional Reliability Standard or modification to, or withdrawal of an existing FRCC Regional Reliability Standard**

A request to develop, modify or withdraw a FRCC Regional Reliability Standard shall be submitted to the FRCC Standards Process Manager (via email to FRCCStandard@frcc.com) by any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, or any interested party or any entity that is directly and materially affected by reliability of the FRCC Bulk Power System. The FRCC Standards Process Manager will acknowledge receipt of the request within fifteen (15) calendar days of its receipt.

### **Step 2 – Assignment of FRCC Regional Reliability Standard Request**

The FRCC Standards Process Manager will assign the request to the FRCC OC, the FRCC PC, or both as appropriate.

### **Step 3 – Posting of FRCC Regional Reliability Standard Request**

The request for standard development, modification or withdrawal will be posted for notification and comment on the FRCC public website for a period of fifteen (15) calendar days, and will be reviewed by the FRCC OC and/or PC. A notice of the posting for comment will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek input on the proposed request.

### **Step 4 – Acceptance of a FRCC Regional Reliability Standard Request**

The FRCC OC and/or the PC will review the request and any comments submitted to determine if the request received will be accepted or rejected within sixty (60) days of its submission. The decision will be posted and, if accepted, the OC and/or the PC will assign and direct a Standard Drafting Team to develop the draft Regional Reliability Standard. If the request is rejected, the FRCC Standards Process Manager will send notification to the entity making the request and to all entities that received the notice in Step 3 above.

### **Step 5 – Drafting and Posting of a FRCC Regional Reliability Standard**

The FRCC OC and/or PC will assign a Standard Drafting Team, within 60 days of acceptance of the request, to develop, in a timely manner, a draft FRCC Regional Reliability Standard that will address the accepted request. The FRCC OC and/or PC may provide a timeframe that is desired for completion of the standard development.

Under the direction of the FRCC OC and/or PC, the Standard Drafting Team, will consider all comments received on the posting of the standard request and will develop a draft FRCC Regional Reliability Standard and corresponding implementation plan.

The draft FRCC Regional Reliability Standard, implementation plan and any supporting documents shall be posted for comments on the FRCC public website for a period of fifteen (15) calendar days, or such longer period as determined by the drafting team or as directed by the FRCC OC and/or the PC. Notice of the posting will go out to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public

Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek comments.

Comments shall be submitted (via email) to the FRCC Standards Process Manager (FRCCStandard@frcc.com). All comments are due by the close of business on the 15<sup>th</sup> calendar day of posting, or such later date as determined by the drafting team or as directed by the FRCC OC and/or PC. If the comment due date falls on a weekend or nationally recognized holiday, the comments shall be due by the close of business on the next regularly scheduled business day.

### **Step 6 – Standards Drafting Team Review of Comments**

All comments should be submitted electronically to the FRCC Standards Process Manager who will forward to the Standard Drafting Team for consideration. All timely comments will be considered.

Under the direction given by the FRCC OC and/or the PC, the Standard Drafting Team will review the comments received and revise the draft FRCC Regional Reliability Standard and/or implementation plan as needed. The Standard Drafting Team will develop written responses to each comment received.

All responses to the submitted comments will be documented and posted on the FRCC public website. If needed, a second draft of the FRCC Regional Reliability Standard will be posted for another comment period. Such comment period shall be fifteen (15) calendar days, or such longer period as determined by the drafting team or as directed by the FRCC OC and/or PC.

Notice of the posting will go out to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator to seek comments.

Based on comments received to the posting, Step 6 will be repeated as necessary until the Standards Drafting Team believes the draft FRCC Regional Reliability Standard is ready to submit to the Ballot Pool for approval.

### **Step 7 –Establishment of Ballot Pool**

The Standard Drafting Team shall submit the final draft of the proposed FRCC Regional Reliability Standard, along with any minority opinions, and all comments and written responses received during the posting(s), to the FRCC Standards Process Manager. The FRCC Standards Process Manager shall establish a Ballot Pool for standard action at least fifteen (15) calendar days prior to the start of a ballot. A pre-ballot survey will be sent to each entity of the RBB to determine their desire to be placed in the Ballot Pool. Once the ballot period opens, the Ballot Pool will be closed and changes to the Ballot Pool participation will not be allowed.

### **Step 8 – Ballot of the new or revised FRCC Regional Reliability Standard**

The FRCC Standards Process Manager will post the final draft of the standard on the FRCC website at least fifteen (15) calendar days before a ballot can begin. The Ballot Pool shall have a minimum of ten (10) calendar days to vote on a standard. The Ballot Pool may vote to approve or not approve the standard. If approved, the FRCC Standards Process Manager will submit the FRCC Regional Reliability Standard, proposed implementation plan, and any supporting documents to the FRCC Board of Directors for adoption.

If approval by the Ballot Pool is not obtained, the PC and/or OC will determine if the draft standard is to be sent back to the standard drafting team to repeat step 6 to incorporate any comments, or to take no further action.

If no further action is taken, the reason for such will be posted on the FRCC public website. A notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.

### **Step 9 – Adoption of FRCC Regional Reliability Standards by the FRCC Board of Directors**

At a regular or special meeting, the FRCC Board of Directors may consider adoption of the proposed FRCC Regional Reliability Standard that has been approved by the RBB Ballot Pool. A FRCC Regional Reliability Standard submitted for adoption by the FRCC Board of Directors must be posted for notification and comment on the FRCC public website at least ten (10) calendar days prior to action by the FRCC Board of Directors. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator. The FRCC Board of Directors shall consider the comments received, the responses provided, and any dissenting opinions. The FRCC Board of Directors shall adopt or reject a FRCC Regional Reliability Standard as submitted, but may not modify the proposed FRCC Regional Reliability Standard. If the FRCC Board of Directors chooses not to adopt a FRCC Regional Reliability Standard, it shall provide its reasons for not doing so.

If the FRCC Board of Directors chooses not to adopt the proposed FRCC Regional Reliability Standard, the reason for such decision will be posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.

### **Step 10 – Submission to NERC and FERC**

Once the FRCC Regional Reliability Standard is adopted by the FRCC Board of Directors, the FRCC Standard Process Manager shall submit the FRCC Regional Reliability Standard to NERC for approval. When approved by NERC, it shall be submitted by NERC to FERC for approval. If NERC or FERC rejects the FRCC Regional Reliability Standard, the FRCC Board of Directors will determine if the standard is to be sent back to the OC and/or PC to incorporate their comments or to take no further action on the standard. A FRCC Regional Reliability Standard that is adopted by the FRCC Board of Directors, approved by NERC and FERC, shall become effective on a date designated by FERC.

## V. Special Procedures

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### *Urgent Action*

Under certain conditions, the entity making the request or the FRCC OC and/or the PC may designate a proposed or revised FRCC Regional Reliability Standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed or revised FRCC Regional Reliability Standard will materially impact reliability of the Bulk Power System in the FRCC Region. The FRCC OC and/or the PC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a FRCC Regional Reliability Standard.

The entity making the request, or the FRCC OC and/or the PC, will prepare a draft of the proposed FRCC Regional Reliability Standard and submit it to the Standards Process Manager for urgent action. The submission must include a justification for the urgent action. The Standards Process Manager shall immediately post the draft as specified in Step 5. The posting shall be a minimum of ten (10) calendar days before the RBB can consider the draft for approval. All comments received during the posting will be considered. Once approved by the RBB, the proposed urgent FRCC Regional Reliability Standard will be sent to the FRCC Board of Directors for adoption.

A FRCC Regional Reliability Standard that is adopted by the FRCC Board of Directors, as an urgent action shall have a termination date specified that shall not exceed 180 days from the approved date. Should there be a need to make the FRCC Regional Reliability Standard permanent, the replacement FRCC Regional Reliability Standard would be required to go through the full standards development process.

An urgent action FRCC Regional Reliability Standard that expires may be renewed by the FRCC Board of Directors using the urgent action process again, in the event a permanent FRCC Regional Reliability Standard has not been adopted. In determining whether to authorize the extension of an urgent action FRCC Regional Reliability Standard, the FRCC OC and/or the PC shall consider the impact to the reliability of the FRCC Bulk Electric System of not continuing the FRCC Regional Reliability Standard. In addition, consideration will be given to whether expeditious progress is being made toward a permanent replacement.

The FRCC OC and/or the PC shall not request the FRCC Board of Directors to extend an urgent action FRCC Regional Reliability Standard if there is insufficient progress toward adopting a permanent replacement FRCC Regional Standard or if the FRCC OC and/or the PC lack confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action FRCC Regional Reliability Standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement FRCC Regional Reliability Standard. With these principles, there is no pre-determined limit on the number of times an urgent action may be renewed. However, each urgent action FRCC Regional Reliability Standard renewal shall be effective only upon adoption by the FRCC Board of Directors, and approval by NERC and FERC.

## ***Interpretations of Standards***

Any member of the FRCC, or group within the FRCC, or an entity that is directly and materially affected by reliability of the FRCC Bulk Power System shall be permitted to request an interpretation of a FRCC Regional Reliability Standard. The entity requesting an interpretation shall send a request to the FRCC Standards Process Manager explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party, or others, caused by the lack of clarity or a possible incorrect interpretation of the FRCC Regional Reliability Standard. The FRCC Standards Process Manager will assemble a team with the relevant expertise to address the clarification.

As soon as practical (but not more than thirty (30) calendar days following the receipt of the request), the team will draft a written interpretation of the FRCC Regional Reliability Standard addressing the issues raised. The FRCC Standards Process Manager will submit the written interpretation to the OC and/or PC for review and approval. If approved by the FRCC OC and/or the PC, the interpretation is appended to the FRCC Regional Reliability Standard and is effective immediately. The interpretation will stand until such time as the FRCC Regional Reliability Standard is revised through the normal process, at which time the FRCC Regional Reliability Standard will be modified to incorporate the clarifications provided by the interpretation.

## ***Appeals***

Any member of the FRCC, or group within the FRCC, or any entity that is directly and materially affected by reliability of the FRCC Bulk Power System, and who feel they have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, or withdrawal of a FRCC Regional Reliability Standard shall have the right to appeal. This appeals process applies only to the FRCC Regional Reliability Standards Process as defined in this document

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within thirty (30) calendar days of the date of the action purported to cause the adverse effect. The final decisions of any appeal shall be documented in writing and posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator .

The appeals process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants:

### **Level 1 Appeal**

Level 1 is the required first step in this appeals process. The appellant submits to the FRCC Standards Process Manager a complaint in writing that describes the substantive or procedural action associated with a FRCC Regional Reliability Standard or the FRCC Regional Reliability Standards Process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the FRCC Standards Process Manager shall prepare a written

response addressed to the appellant as soon as practical but not more than forty-five (45) calendar days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the record associated with the FRCC Regional Reliability Standard.

## **Level 2 Appeal**

If after the Level 1 Appeal, the appellant remains unsatisfied with the resolution, notification shall be made in writing to the FRCC Standards Process Manager. Within thirty (30) calendar days of receiving the notification, the FRCC Standards Process Manager shall convene a Level 2 Appeals Panel. This panel shall consist of five members appointed by the FRCC Board of Directors. In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The FRCC Standards Process Manager shall post on the FRCC public website the notice of the Level 2 appeal and other relevant materials. Notice of the posting will be sent to (1) the Registered Ballot Body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator. At least fifteen (15) calendar days notice of the meeting of the Level 2 Appeals Panel will be made. In addition to the appellant, any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System, and who is directly and materially affected by the substantive or procedural action referenced in the complaint shall be heard by the panel.

The Level 2 Appeals Panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The Level 2 Appeals Panel may in its decision find for the appellant and remand the issue to the FRCC OC and/or the PC for resolution with a statement of the issues and facts in regard to which fair and equitable action was not taken. The Level 2 Appeals Panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections.

The Level 2 Appeals Panel may not, however, revise, approve, disapprove, or adopt a FRCC Regional Reliability Standard, as these responsibilities remain with the FRCC Board of Directors. The actions of the Level 2 Appeals Panel shall be posted on the FRCC public website. Notice of the posting will be sent to (1) the Registered Ballot body, (2) the FRCC standing committees, subcommittees and working groups, (3) the Florida Public Service Commission, and (4) the SERC Southern Sub-region Reliability Coordinator.



## **VI. Maintenance of the FRCC Regional Reliability Standards and Process**

### ***Requests to Revise the FRCC Regional Reliability Standard Development Process***

Any member of the FRCC, or group (i.e. committee, subcommittee, working group or task force) within the FRCC, or any entity that is directly and materially affected by the reliability of the FRCC Bulk Power System may submit a written request to modify the FRCC Regional Reliability Standard Development Process Manual. The FRCC Standards Process Manager shall oversee the handling of the request. The FRCC OC and/or the PC shall review the request and submit recommendations to the FRCC Board of Directors for consideration. The FRCC Board of Directors, on its own motion, may amend the FRCC Regional Reliability Standard Process.

### ***Five-Year Review***

Each FRCC Regional Reliability Standard shall be reviewed at least once every five (5) years. The review date will be determined from the effective date or the latest revision date whichever is later. The review process shall be conducted in accordance with Steps 1 through 10 of the FRCC Regional Reliability Standard Development Process Manual. As a result of this review, a FRCC Regional Reliability Standard shall be reaffirmed, revised, or withdrawn.

### ***Filing of FRCC Regional Standards with Regulatory Agencies***

All adopted FRCC Regional Reliability Standards will be filed with FERC.

**APPENDIX A**

Email completed form to [FRCCStandard@frcc.com](mailto:FRCCStandard@frcc.com)

**FRCC Regional Reliability Standard Request Form**

Title of Proposed Standard
Request Date

<b>Requestor Information</b>	<b>TYPE</b> (Check a box for each one that applies)
Name	<input type="checkbox"/> New Standard
Primary Contact	<input type="checkbox"/> Revision to existing Standard
Telephone	<input type="checkbox"/> Withdrawal of existing Standard
Fax	
Email	<input type="checkbox"/> Urgent Action

**Purpose** (Describe the purpose of the standard – what the standard will achieve in support of reliability)

**Industry Need** (Provide a detailed statement justifying the need for the proposed standard, along with any supporting documentation)

**Brief Description** (Describe the proposed standard in sufficient detail to clearly define the scope in a manner that can be easily understood by others)

**FRCC Regional Reliability Standard Request Form**

**The Standard will Apply to the Following Functions** (Check box for each one that applies)

<input type="checkbox"/>	Reliability Coordinator	Ensures the reliability of the bulk transmission system within its Reliability Authority area.
<input type="checkbox"/>	Balancing Authority	Integrates resource plans ahead of time, and maintains load-interchange-resource balance within its metered boundary and supports system frequency in real time
<input type="checkbox"/>	Planning Authority	Plans the Bulk Electric System
<input type="checkbox"/>	Resource Planner	Develops a long-term plan for the resource adequacy of specific loads within a Planning Authority area
<input type="checkbox"/>	Transmission Planner	Develops a long-term plan for the reliability of transmission systems within its portion of the Planning Authority area
<input type="checkbox"/>	Transmission Service Provider	Provides transmission services to qualified market agreements
<input type="checkbox"/>	Transmission Owner	Owens transmission facilities
<input type="checkbox"/>	Transmission Operator	Operates and maintains the transmission facilities, and executes switching orders
<input type="checkbox"/>	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer
<input type="checkbox"/>	Generator Owner	Owens and maintains generation unit(s)
<input type="checkbox"/>	Generator Operator	Operates generation units(s) and performs the functions of supplying energy and Interconnected Operations Services
<input type="checkbox"/>	Purchasing-Selling Entity	The function of purchasing or selling energy, capacity, and all necessary Interconnected Operations Services as required
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission (and related generation services) to serve the end user

**FRCC Regional Reliability Standard Request Form**

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**NERC Reliability Principles**

<b>Applicable Reliability Principles (Check box for all that apply.)</b>	
	1. Interconnected bulk electric systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
	2. The frequency and voltage of interconnected bulk electric systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
	3. Information necessary for the planning and operation of interconnected bulk electric systems shall be made available to those entities responsible for planning and operating the systems reliably.
	4. Plans for emergency operation and system restoration of interconnected bulk electric systems shall be developed, coordinated, maintained, and implemented.
	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected bulk electric systems.
	6. Personnel responsible for planning and operating interconnected bulk electric systems shall be trained, qualified, and have the responsibility and authority to implement actions.
	7. The security of the interconnected bulk electric systems shall be assessed, monitored, and maintained on a wide-area basis.

**NERC Market Interface Principles**

<b>Does the proposed Standard comply with all of the following Market Interface Principles?</b>	
Recognizing that reliability is an essential requirement of a robust North American economy:	
yes or no	1. A reliability standard shall not give any market participant an unfair competitive advantage.
yes or no	2. A reliability standard shall neither mandate nor prohibit any specific market structure.
yes or no	3. A reliability standard shall not preclude market solutions to achieving compliance with that standard.
yes or no	4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.

**FRCC Regional Reliability Standard Request Form**

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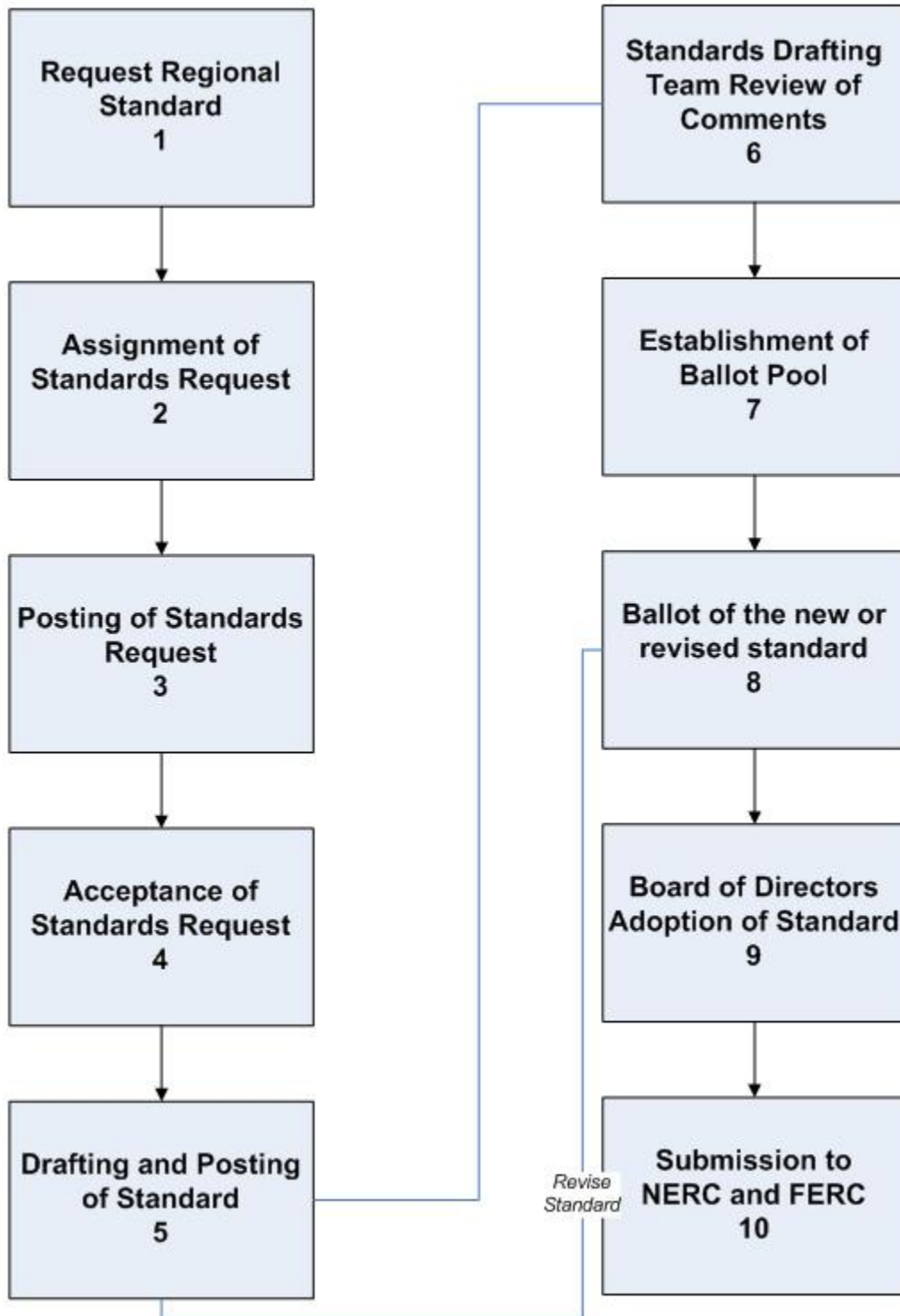
**Related Standards**

Standard No.	Explanation

<p><b>Proposed Implementation</b>                      <b>days after Board of Directors adoption or</b></p> <hr/> <p><b>On (date):</b></p>
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APPENDIX B

*Process Diagram*



## APPENDIX C

### Development of and Voting of the Registered Ballot Body

#### **1. Registration Procedures**

The Registered Ballot Body (RBB) comprises all entities<sup>1</sup> and persons that:

- Qualify for one of the FRCC Industry Sectors, and
- Are registered with the FRCC as potential ballot participants in the voting on FRCC Regional Reliability Standards.

All registrations will be done electronically. All entities and persons will self-select to belong to the RBB. The sectors shall be identical to those in Section 1.2 of the FRCC Bylaws.

All RBB members will have the ability to vote on a standard. Voting will be done in writing (either email or facsimile) with each RBB member having one vote. The RBB representative will have the right to register and participate in ballot pools to cast their vote on a standard being considered for approval.

#### **2. Sector Qualification Guidelines**

The general guidelines are as follows:

- An entity or person may register in the RBB in any Sector in which it qualifies for provided that an entity or person registers as a potential ballot participant in only one (1) Sector.
- Any individual currently employed by an organization that is eligible to join one or more of the other five (5) sectors, shall not be qualified to join as a General Sector RBB member.

#### **3. Ballot Pool Voting**

A Ballot Pool will be established to vote on any proposed standards action. Each RBB member choosing to belong to a Ballot Pool will have one individual vote. Two-thirds of the individual votes of the Ballot Pool shall constitute a quorum.

Approval of a FRCC Regional Reliability Standard requires the affirmative vote of a two-thirds majority of the weighted sector votes cast. The number of votes cast in each sector is the sum of the affirmative and negative votes, excluding abstentions.

The following steps will be used to determine if there is sufficient affirmative votes:

1. The number of affirmative votes cast in each sector will be divided by the sum of affirmative and negative votes cast to determine the fractional affirmative vote for each sector. Abstentions will not be counted.

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<sup>1</sup> An entity and all of its Affiliates (as defined in the FRCC Bylaws) shall be considered one entity for purposes of registering as a potential ballot participant.

2. The fractional affirmative vote for a sector will then be multiplied by the Sector Weight Factor to determine the weighted fractional affirmative vote for a sector. The Sector Weight Factors are:
  - a. Suppliers Sector: Weight Factor = 2.5
  - b. Non-Investor Owned Utility Wholesale Sector: Weight Factor = 2.0
  - c. Load Serving Entity Sector: Weight Factor = 1.0
  - d. Generating Load Serving Entity Sector: Weight Factor = 3.0
  - e. Investor Owned Utility Sector: Weight Factor = 3.5
  - f. General Sector: Weight Factor = 1.0
3. The sum of the weighted fractional affirmative votes from all sectors divided by the sum of the weights of the sectors voting will be used to determine if a two-thirds majority has been achieved. A sector will be considered as “voting” if any member of the sector in the Ballot Pool casts either an affirmative or negative vote.
4. A FRCC Regional Reliability Standard will be considered “approved” if the sum of the weighted fractional affirmative votes from all sectors divided by the sum of the weights of the voting sectors is two-thirds or greater.



## History of Revisions

Approved March 2, 2006  
Amended July 25, 2006  
Amended October 24, 2006  
Amended September 25, 2007

## **EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

### **1.0 FRCC COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

#### **1.1 Obligations of Florida Reliability Coordinating Council, Inc.**

FRCC will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within FRCC's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

#### **1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program**

The FRCC has "customized" the NERC pro-forma document by changing "Compliance Enforcement Authority" and "Regional Entity" to "FRCC" where appropriate. FRCC has also removed any reference to "Applicable Governmental Authority" since our boundary is fully within the U.S. In addition, the following items are being identified to show where FRCC has provided additional process detail explaining how we will implement the NERC Compliance Monitoring and Enforcement Program. We believe these items add needed detail and clarification and do not constitute "deviations" from NERC's Compliance Monitoring and Enforcement Program.

##### Section 1.1 - Definitions

The FRCC has added a definition for "Business Days". Registered Entities may observe holidays differently than the FRCC. To ensure complete understanding of the term "business day" especially as it relates to the defined term "Required Date", the FRCC has included the following definition:

*1.1.4 Business Days: Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule; New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day.*

The FRCC has included a definition of "Reliability Standard". This was missing and needed clarification:

*1.1.19 Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.*

##### Section 2.0 – Identification of Organization Responsible for complying with Reliability Standards

In the first paragraph, the FRCC removed the word "promptly" and replaced it with "within thirty (30) days" to clarify the time frame for which a Registered Entity is to notify the FRCC with changes in its registration information. Promptly is an ambiguous term and the 30 day

timeframe corresponds with the minimum compliance monitoring period currently identified in NERC's Reliability Standards.

### Section 3.0 – Compliance Monitoring and Enforcement Processes

The FRCC has added a paragraph that identifies the use of our FRCC Compliance Committee in a non-decisional review process, as part of our “due diligence” process in the final determination of alleged violations. The FRCC Compliance Committee is a balanced stakeholder committee that has the technical expertise and experience to assist the FRCC Compliance Staff. After initial determination of an alleged violation by the FRCC Compliance Staff, and after required notification to NERC and the Registered Entity, the FRCC Compliance Committee Staff will review may provide their FRCC Compliance Staff determinations for concurrence to the FRCC Compliance Committee for a technical review. This review helps provide an increased understanding of how to comply with Reliability Standards. This is especially important for those standard requirements that may lack the clarity necessary to ensure compliance and increased reliability. If the FRCC Compliance Committee does not concur with the FRCC Compliance Staff determination, The results of this technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation. will be made directly by the FRCC Board Compliance Committee. The FRCC believes this process assures an increased understanding of standard requirements by both registered entities and compliance staff; helps build trust and transparency in the process and ultimately results in increased reliability to the bulk power system. ~~appropriate check and balance of staff and stakeholders.~~

### Section 5.2 – Registered Entity Response

The FRCC has identified that a FRCC Board Compliance Committee will appoint a panel called the Compliance Advisory Panel to work with the Registered Entity to resolve any conflicts within the forty day period each time a Registered Entity contests an alleged violation and sanction and/or penalty. The FRCC believes this process will resolve many disputes, thereby reducing the number of costly and time consuming formal hearings.

The FRCC has added a timeframe of 10 business days for a Registered Entity to request a hearing if the dispute was not resolved in the 40 days working with the Compliance Advisory Panel. This timing was needed to clarify the timeframe for the decision to be made.

### Section 5.6 – Notice of Penalty

The FRCC changed the word “The” to “Any” at the beginning of the 2<sup>nd</sup> paragraph to provide needed clarification. Words were added in the preceding paragraph to clarify that NERC may revise a penalty or sanction that the FRCC submits. The word “The” in the 2<sup>nd</sup> paragraph seemed to refer only to the revised penalty which is incorrect. The 2<sup>nd</sup> paragraph applies to any penalty that is ultimately filed with FERC.

### Attachment 2 – Hearing Procedures

The FRCC accepted the Hearing Procedures developed jointly by the Regional Entities in the Eastern Interconnection. However, we have made some changes to add detail or clarify the document.

#### Attachment 2 – Section 1.1.5 Definitions

Throughout Attachment 2 the FRCC has inserted the term “business” before days that are less than fifteen (15) to be consistent with the terminology in the body of the program document itself. This is supported by the inclusion of the definition of “business days” mentioned above. The FRCC added “and FRCC” to the first paragraph of this section to clarify that both the NERC pro-forma definitions and the FRCC added definitions are included.

#### Attachment 2 – Section 1.2.5 Computation of Time

The FRCC has deleted this section as we believe it to be very confusing. The definition of “business days” and the addition of the term “business” to clarify business days from calendar days eliminate the need for this section. We left it intentionally blank to keep the numbering the same for the rest of the document.

#### ~~Attachment 2 – Section 1.3.2 Shortened Hearing Procedures~~

~~Paragraph (b) was corrected to change seven (7) to five (5) business days. This paragraph indicates that the availability of documents in the shortened procedure is pursuant to Paragraph 1.5.7 that indicates five (5) business days. We made the change to be consistent.~~

## **2.0 REGIONAL HEARING OF COMPLIANCE MATTERS**

**FRCC** shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be the FRCC Board Compliance Committee (BCC), a balanced compliance panel reporting directly to the FRCC’s Board of Directors.

The BCC will consist of one (1) Voting Member from each of the six (6) sectors in the FRCC, who shall be a member of the Board of Directors. Each year, two (2) members from each Sector of the FRCC Board of Directors will volunteer to serve in a BCC pool. At the time a hearing request is received, the Chair of the FRCC Board of Directors will appoint one member from each Sector to form the BCC for that hearing. The Board Member from the Registered Entity that has requested the hearing will not be selected for that BCC. In the event one (1) Sector of the FRCC declines to participate on the BCC, the Chair of the Board of Directors shall randomly select one (1) additional BCC member from the remaining five (5) Sectors to constitute the BCC. The Chair of the FRCC Board of Directors will appoint a Chair and Vice-Chair of the BCC. Terms of BCC members will be equivalent to the time it takes to complete the hearing for which they were selected. Members may be re-appointed to subsequent terms without any limits to the number of terms they serve.

FRCC Industry Sectors are as follows:

- One (1) Member from the Investor Owned Utility Sector
- One (1) Member from the Suppliers Sector
- One (1) Member from the Non-Investor Owned Utility Wholesale Sector
- One(1) Member from the Load Serving Entity Sector
- One (1) Member from the Generating Load Serving Entity Sector
- One (1) Member from the General Sector

Each member of the BCC shall be a full voting member. There will be no alternates or proxies for the BCC members. Decisions of the BCC shall require (i) a quorum to be present requiring at least fifty (50) percent of the number of members assigned to the BCC and (ii) a majority vote of the members of the BCC voting on the decision.

### **3.0 OTHER DECISION-MAKING BODIES**

The FRCC has engaged NERC to oversee the compliance monitoring and enforcement responsibility as related to FRCC's compliance with Reliability Standard requirements that are applicable to the functions for which FRCC is a Registered Entity.



**Florida Reliability Coordinating Council**  
**Compliance Monitoring and Enforcement Program**

[Amended October 16, 2007](#) [July 21, 2008](#)

# Compliance Monitoring and Enforcement Program

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

**Compliance Monitoring and Enforcement Program**

**ATTACHMENT 2 – HEARING PROCEDURES**



# Compliance Monitoring and Enforcement Program

## COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

### 1.0 INTRODUCTION

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Florida Reliability Coordinating Council (“FRCC”) to monitor, assess, and enforce compliance with Reliability Standards within the FRCC Region<sup>1</sup>. This is accomplished through compliance monitoring and rigorous proactive Compliance Audits. Compliance monitoring and enforcement programs also will be implemented in Canada consistent with Canadian laws and agreements.

### 1.1 Definitions

- 1.1.1 Alleged Violation: A potential violation for which the FRCC ~~has completed its accuracy and completeness review and~~ has determined that evidence exists to indicate a Registered Entity has violated a Reliability Standard.
- 1.1.2 Annual Audit Plan: A plan developed annually by the FRCC that includes the Reliability Standards and Registered Entities to be audited, the schedule of Compliance Audits, and Compliance Audit Participant requirements for the calendar year.
- 1.1.3 Applicable Governmental Authority: The Federal Energy Regulatory Commission (“FERC”) within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.
- 1.1.4 Business Days: Monday, Tuesday, Wednesday, Thursday and Friday with the following exceptions as defined by the yearly FRCC Holiday Schedule. New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve and Christmas Day.
- 1.1.5 Complaint: An allegation that a Registered Entity violated a Reliability Standard.
- 1.1.6 Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the requirements of applicable Reliability Standards.
- 1.1.7 Compliance Audit Participants: Registered Entities scheduled to be audited and the audit team members.

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<sup>1</sup> The FRCC Region is peninsular Florida east of the Apalachicola River

## Compliance Monitoring and Enforcement Program

- 1.1.8** Compliance Enforcement Authority: NERC or the FRCC in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.
- 1.1.9** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.
- 1.1.10** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by the FRCC or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.
- 1.1.11** Exception Reporting: Information provided to the FRCC by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.12** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including FRCC decision, Settlement Agreement, or otherwise.
- 1.1.13** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.14** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the FRCC in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.15** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the FRCC on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.16** FRCC Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of

## Compliance Monitoring and Enforcement Program

compliance within the FRCC's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.

- 1.1.17** FRCC Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the FRCC, (3) the methods to be used by the FRCC for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the FRCC's Annual Audit Plan.
- 1.1.18** Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.
- 1.1.19** Reliability Standard: A NERC Reliability Standard or FRCC Regional Reliability Standard that has been approved by FERC for mandatory enforcement.
- 1.1.20** Remedial Action Directive: An action (other than a penalty or sanction) required by the FRCC that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.
- 1.1.21** Required Date: The date given a Registered Entity in a notice from the FRCC by which some action by the Registered Entity is required. Such date shall provide the Registered Entity a reasonable period of time in which to take the required action, given the circumstances and the action required.
- 1.1.22** Self-Certification: Attestation by a Registered Entity of compliance or non-compliance with Reliability Standards for which Self-Certification is required by the FRCC and that are included for monitoring in the FRCC Implementation Plan.
- 1.1.23** Self-Reporting: A report by a Registered Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.

## Compliance Monitoring and Enforcement Program

**1.1.24 Spot Checking:** A process in which the FRCC requests a Registered Entity to provide information to support the Registered Entity's Self-Certification, Self-Reporting, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards. Spot Checking may also be random or initiated in response to events, as described in the Reliability Standards, or by operating problems or system events. Spot Checking may require an on-site review to complete.

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

The FRCC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure. Each Registered Entity shall inform the FRCC within thirty (30) days of changes to its registration information. The FRCC shall inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity. The FRCC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

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

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

[As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject of 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.](#)

### **3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES**

## Compliance Monitoring and Enforcement Program

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

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

~~Prior to reporting an Alleged Violation of Reliability Standards to NERC under Section 8.0, the FRCC may review the report of violation submitted to it by the Registered Entity, audit team, or others for accuracy and completeness. This may include a review of the applicability of the Reliability Standard(s) upon the Registered Entity, a review of the Registered Entity's actions or conduct in light of the particular Reliability Standard or requirement reported to have been violated, and a review of the functions performed by the Registered Entity and the function reported to have violated the Reliability Standard or requirement. Any corrections to the report of violation are to be made by the FRCC, and the Alleged Violation is to be reported to NERC if the FRCC has confirmed that the report contains evidence indicating the Registered Entity may have violated a Reliability Standard.~~

~~The FRCC Compliance Staff may provide the determination of an alleged violation to the FRCC Compliance Committee (CC) for a non-decisional technical review. This technical review may provide information helpful to the FRCC Compliance Staff in making the final determination of an alleged violation.~~

~~The FRCC Compliance Staff will report the determination of alleged violation to the FRCC Compliance Committee (CC) for review. With respect to a notice of alleged violation proposed to be issued to a particular registered entity, no member of the FRCC CC who is employed by, or has a financial or other interest in, the registered entity or any of its affiliates may participate in the review. If the FRCC CC does not concur with the FRCC Compliance Staff determination and the FRCC Compliance Staff after discussion with the FRCC CC, maintains its original determination, then the disagreement will be sent to the FRCC Board Compliance Committee for a ruling on the disagreement. If the FRCC Compliance Staff does not contest the decision of the FRCC CC within thirty (30) days, it shall be deemed to have accepted the FRCC CC determination of violation.~~

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

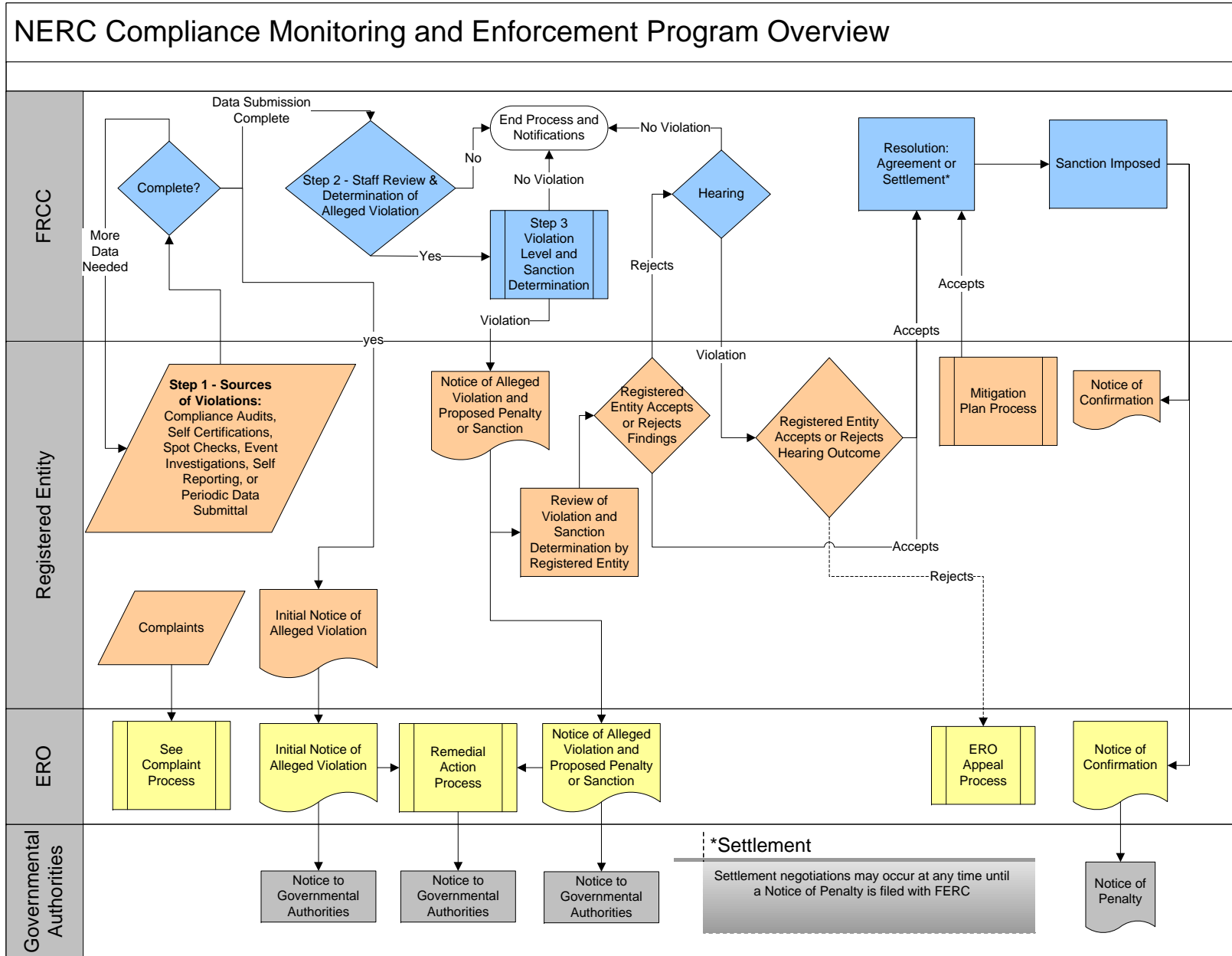
## Compliance Monitoring and Enforcement Program

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

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

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

**Compliance Monitoring and Enforcement Program**  
**Figure 3.0 – Compliance Monitoring and Enforcement Program Overview**





## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

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

#### 3.1.1 Compliance Audit Process Steps

The process steps for a Compliance Audit are as follows and as shown on **Figure 3.1**:<sup>2</sup>

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

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<sup>2</sup>This process normally completes within sixty (60) days of the completion of the on-site Compliance Audit work at the Registered Entity's site.

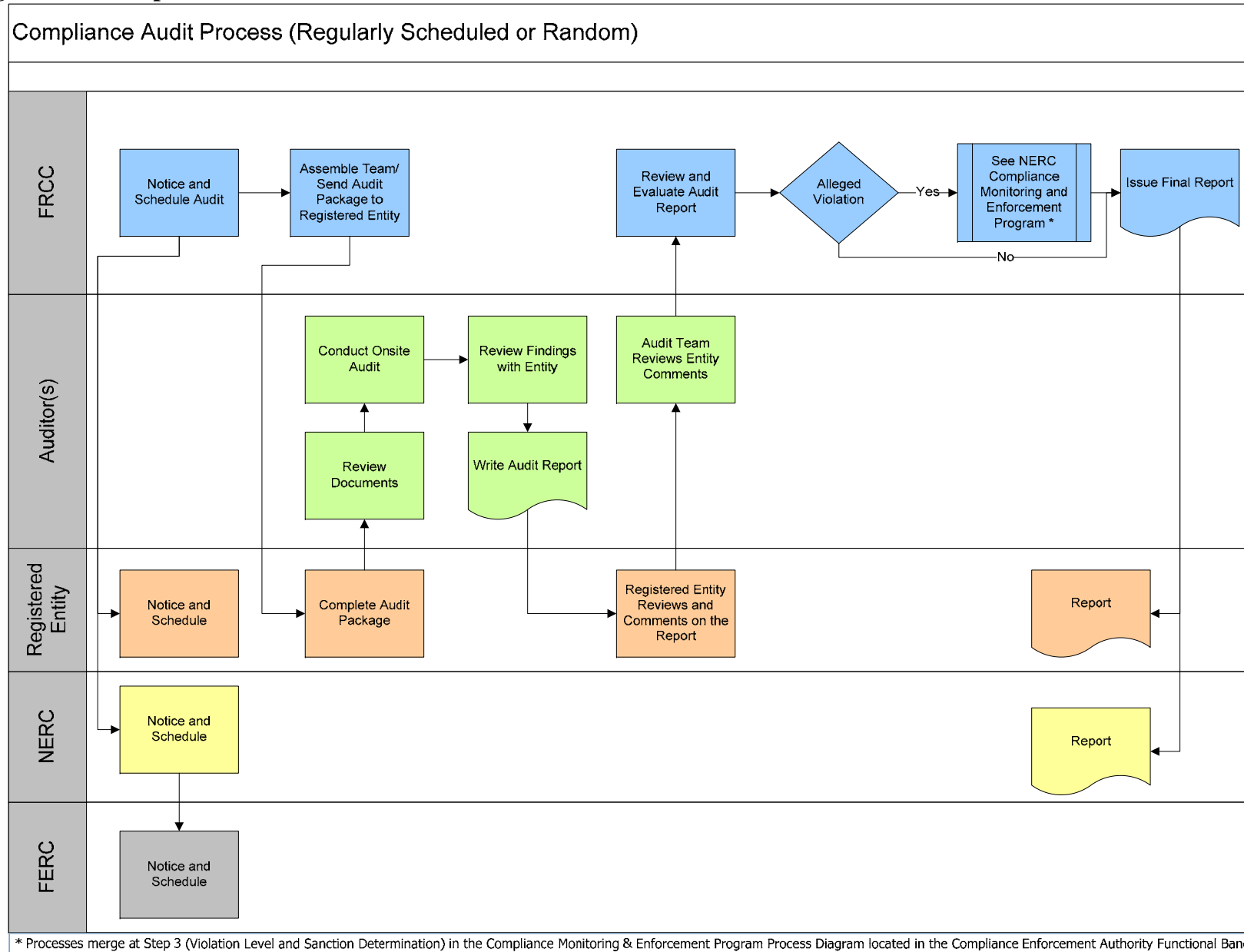


## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

## Figure 3.1 – Compliance Audit Process



## **Compliance Monitoring and Enforcement Program**

### **3.1.2 FRCC Annual Audit Plan and Schedule**

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

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

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

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

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

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

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

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

The audit team shall be comprised of staff personnel from the FRCC and may include contractors and industry volunteers as determined by the FRCC to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from the FRCC and is responsible for the conduct of the Compliance Audit and preparation of the audit report. At their discretion, NERC Compliance Staff may participate on any FRCC Compliance Audit team either as an observer or as an audit team member as determined by the FRCC. Additionally, FERC and

## Compliance Monitoring and Enforcement Program

other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

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

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

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

### 3.1.6 Compliance Audit Reports

The audit team shall develop a draft audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any Alleged Violations of Reliability Standards; identify any Mitigation Plans or Remedial Action Directives, which have been completed or pending in the year of the Compliance Audit; and identify the nature of any confidential information redacted. A separate document may be prepared that contains recommendations of the audit team. Any recommendations contained in that document will be considered non-binding. The draft report will be provided to the Registered Entity for comment.

The audit team will consider corrections based on comments of the Registered Entity and provide the final audit report to the FRCC who will review the report and assess compliance with

## Compliance Monitoring and Enforcement Program

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

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

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

### 3.2 Self-Certification

The FRCC may require Registered Entities to self-certify their compliance with Reliability Standards.

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

#### 3.2.1 Self-Certification Process Steps

The process steps for the Self-Certification process are as follows and as shown in **Figure 3.2.1**.<sup>3</sup>

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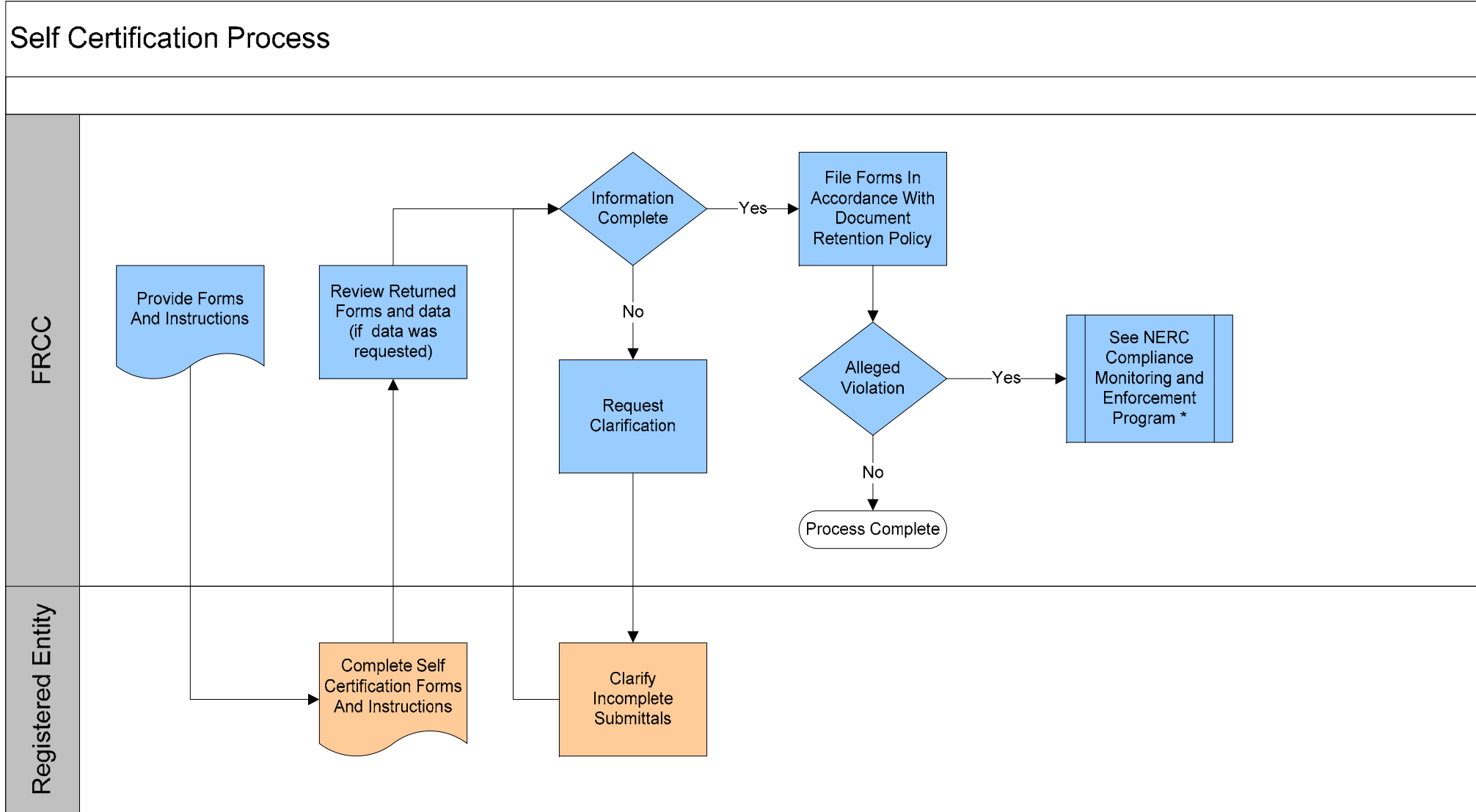
<sup>3</sup>If no non-compliances are found, this process normally completes within sixty (60) days of the FRCC's receipt of data.

## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



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

## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

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

#### 3.3.1 Spot Checking Process Steps

The process steps for Spot Checking are as follows and as shown in **Figure 3.3.1:**<sup>4</sup>

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

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<sup>4</sup>If no alleged violations are found, this process normally completes within ninety (90) days of the FRCC's receipt of data.

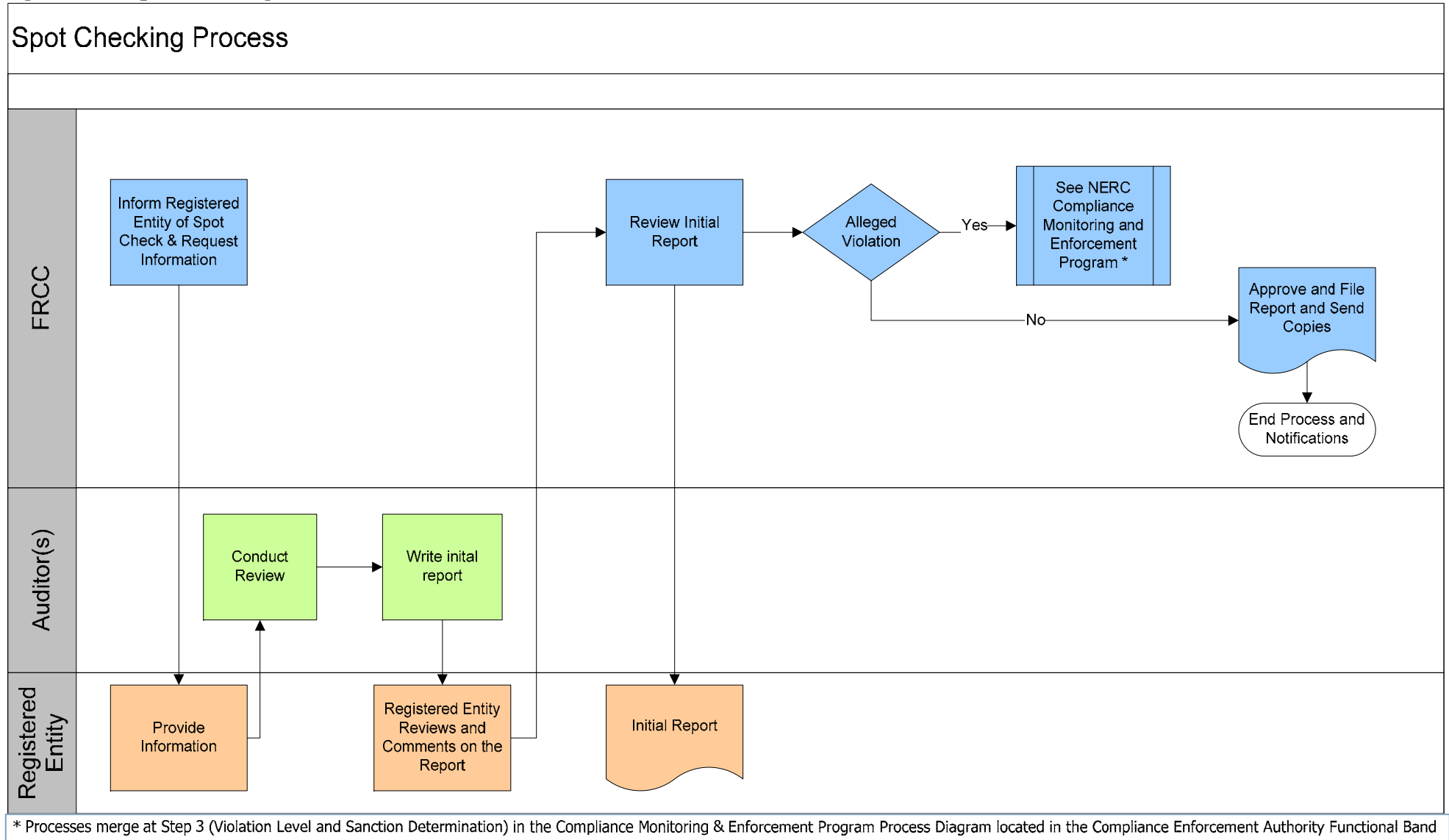


## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

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

Compliance Violation Investigations will generally be led by the FRCC's staff. NERC reserves the right to assume the leadership of a Compliance Violation Investigation.<sup>5</sup> The FRCC shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation.

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

If an Applicable Governmental Authority other than FERC initiates a Compliance Violation Investigation of a U.S.-related matter, NERC shall provide notice to FERC of the Compliance Violation Investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations. If FERC initiates a Compliance Violation Investigation of a non-U.S.-related matter, NERC shall provide notice of the Compliance Violation Investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the bulk power system that is the subject of the Compliance Violation Investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the Compliance Violation Investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

#### 3.4.1 Compliance Violation Investigation Process Steps

The process steps for a Compliance Violation Investigation are as follows and as shown in **Figure 3.4.1**:<sup>6</sup>

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<sup>5</sup>Examples of situations in which NERC may decide to lead a Compliance Violation Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate investigations into matters that may cross Regional Entity boundaries, (iii) where the possible violation is related to the FRCC or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the FRCC determines it cannot conduct the Compliance Violation Investigation.

<sup>6</sup>If no alleged violation(s) are found, this process normally completes within sixty (60) days following the decision to initiate a Compliance Violation Investigation.

## Compliance Monitoring and Enforcement Program

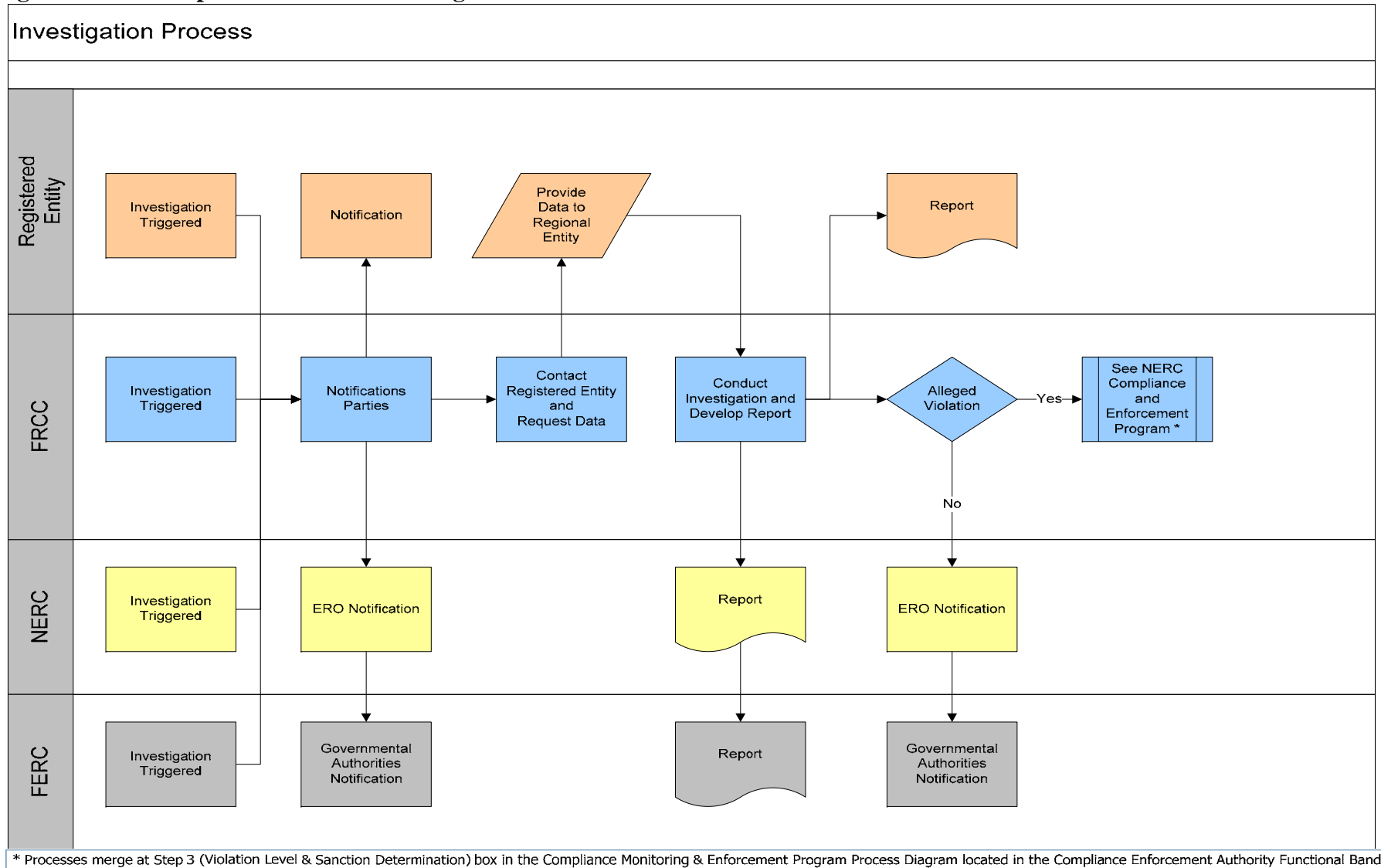
- The FRCC is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted. Within two (2) business days of the decision to initiate a Compliance Violation Investigation, the FRCC: (i) notifies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

## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

**Figure 3.4.1 – Compliance Violation Investigation Process**



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

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

#### 3.5.1 Self-Reporting Process Steps

The process steps for Self-Reporting are as follows and as shown in **Figure 3.5.1**:<sup>7</sup>

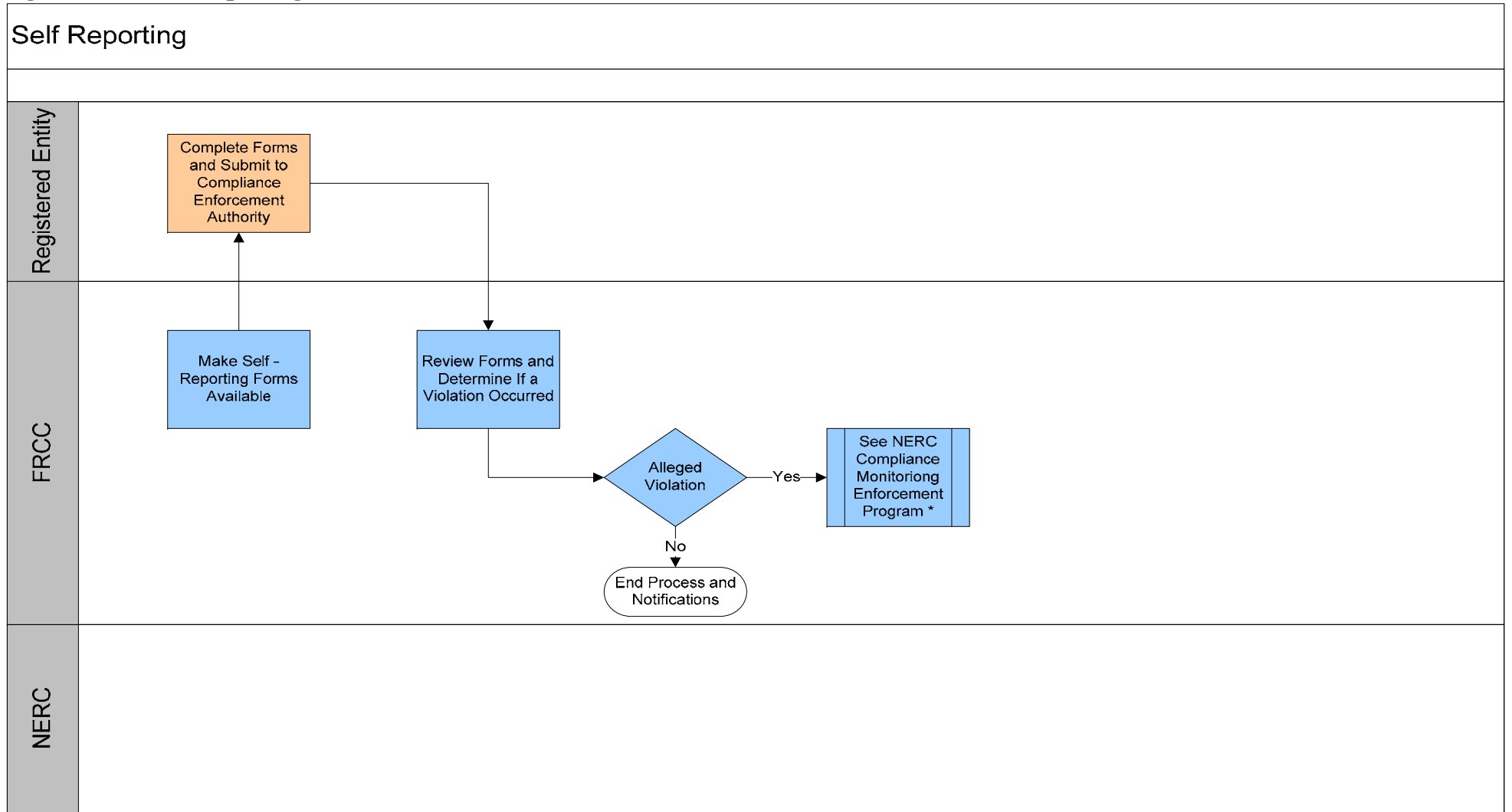
- The FRCC posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to the FRCC.
- The FRCC reviews the information to determine compliance with the Reliability Standards and may request the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

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<sup>7</sup>This process normally completes within sixty (60) days following the FRCC's receipt of data.  
[October 16, 2007 Revised for July 21, 2008 Compliance Filing](#)

# Compliance Monitoring and Enforcement Program

## Figure 3.5.1 – Self Reporting Process



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



## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

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

#### 3.6.1 Periodic Data Submittals Process Steps

The process steps for Periodic Data Submittal are as follows and as shown in **Figure 3.6.1**:<sup>8</sup>

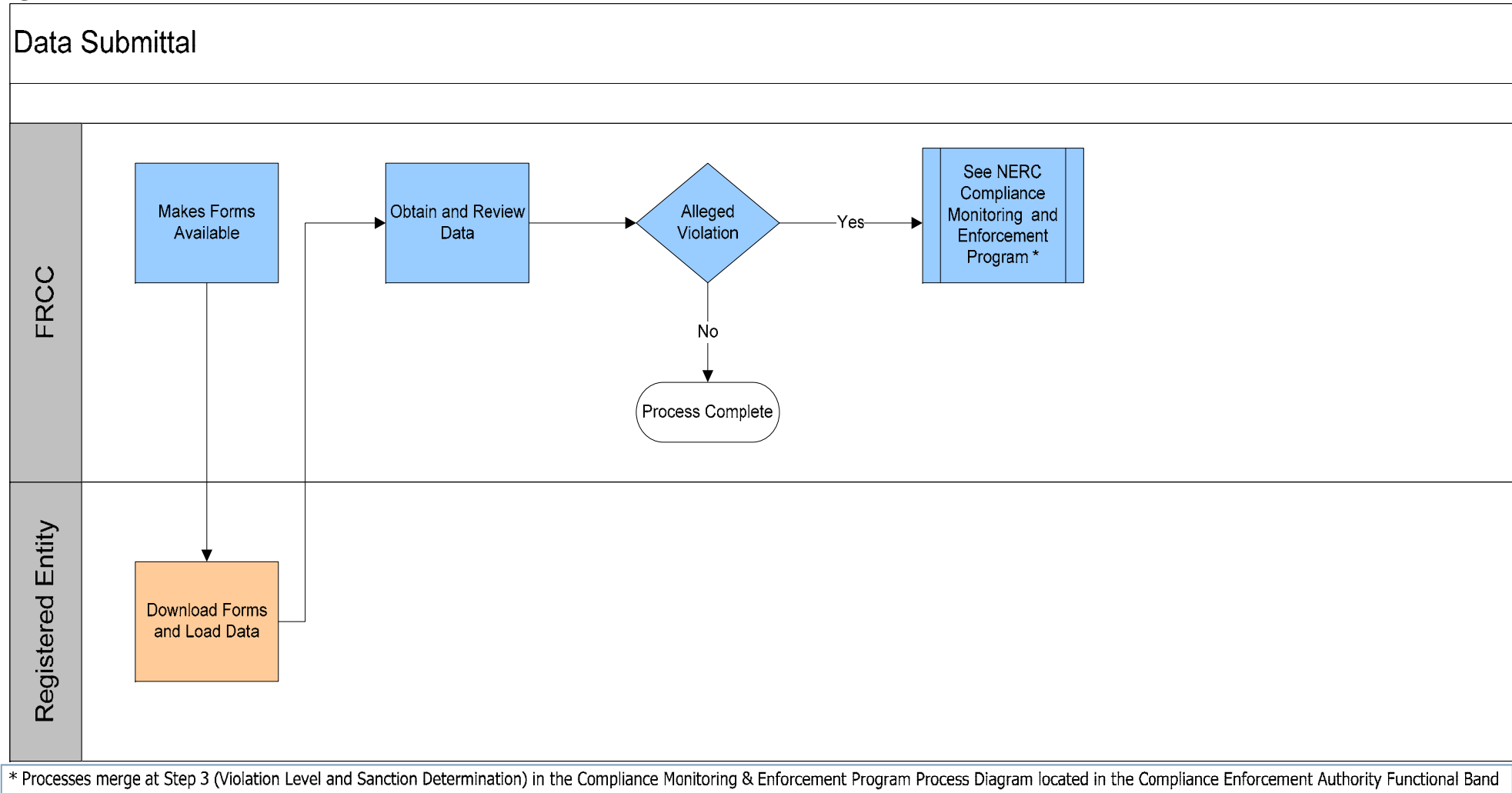
- The FRCC posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. The FRCC ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being evaluated are maintained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

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<sup>8</sup>If no violation(s) are found, this process generally completes within ten (10) business days of the FRCC's receipt of data.

# Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

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

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

### 3.8 Complaints

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

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

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

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

#### 3.8.1 Complaint Process Steps

The detailed process steps for the Complaint process are as follows and as shown in **Figure 3.8.1**.<sup>9</sup>

- The complainant notifies NERC or the FRCC using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. A link to the Complaint reporting form will be posted on the NERC and the FRCC web sites. The Complaint should include sufficient information to enable NERC or the FRCC to make an assessment of whether the initiation of a Compliance Violation Investigation is

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<sup>9</sup>If no violations are found, this process normally completes within sixty (60) days following receipt of the Complaint.

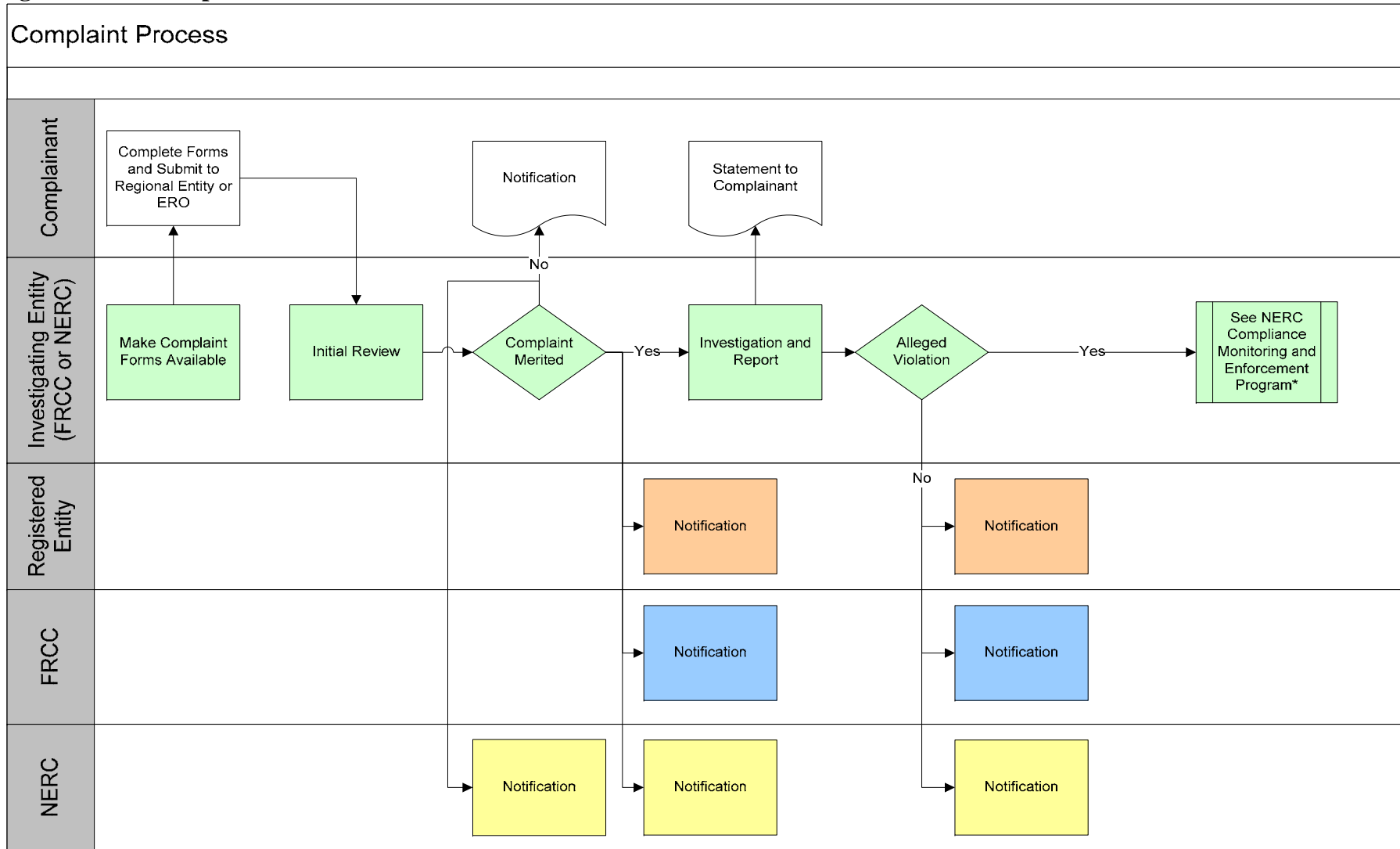
## Compliance Monitoring and Enforcement Program

warranted. NERC or the FRCC may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.

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

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

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

## Compliance Monitoring and Enforcement Program

### 3.8.2 Anonymous Complainant Notification Procedure

An anonymous complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, can report the possible violation and request that the complainant's identity not be disclosed.<sup>10</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.8.1. Anonymous Complaints received by the FRCC will either be directed to NERC or the FRCC will collect and forward the information to NERC, at the FRCC's discretion. Neither NERC nor the FRCC shall disclose the identity of any person or entity reporting possible violations to NERC or to a FRCC that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where the FRCC collects the information, by NERC and the FRCC. If the FRCC determines that a Compliance Violation Investigation is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

## 4.0 ANNUAL IMPLEMENTATION PLANS

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

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

### 4.2 FRCC Implementation Plan

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

## 5.0 ENFORCEMENT ACTIONS

The FRCC shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the FRCC's area of responsibility, and (ii) if so, the appropriate remedial actions, and penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction Guidelines* by Regional Entities by direct oversight and review of penalties and sanctions, and the FRCC shall provide to NERC such information as is requested by NERC concerning any penalty, sanction, or remedial actions imposed by the FRCC.

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process

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<sup>10</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

## Compliance Monitoring and Enforcement Program

requirements. If a party believes that a request for data or information is unreasonable, the party may request a written determination from the NERC compliance program officer.

### 5.1 Notification to Registered Entity of Alleged Violation

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

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the FRCC believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by the FRCC to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the FRCC will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:
  - 1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or
  - 2. agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or
  - 3. contest both the Alleged Violation and proposed penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;
- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the shortened procedure in Section 1.3.2, or (ii) the full hearing procedure, in **Attachment 2, Hearing Procedure**, and

## Compliance Monitoring and Enforcement Program

- (viii) required procedures to submit the Registered Entity's Mitigation Plan.

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

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

### 5.2 Registered Entity Response

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

If the Registered Entity contests the Alleged Violation or the proposed sanction, the Registered Entity shall submit to the FRCC a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The FRCC shall schedule a conference with a FRCC Board Compliance Committee (BCC) appointed Compliance Advisory Panel (CAP) and the Registered Entity within ten (10) business days after receipt of the response. No person who is employed by, or has a financial or other interest in the registered entity contesting the alleged violation, or any of its affiliates, may participate as a member of the CAP. The CAP will include at least one member of the FRCC Compliance Staff and all CAP discussions will be conducted confidentially. If the FRCC and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. If no hearing request is made within ten (10) business days, the violation will become a Confirmed Violation when filed by NERC with FERC.

If a hearing is requested the FRCC shall initiate the hearing process by convening the FRCC BCC and issuing a written notice of hearing to the Registered Entity and the FRCC BCC and identifying the FRCC's designated hearing representative.<sup>11</sup>

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<sup>11</sup>If the dispute involves a proposed Mitigation Plan, which has not been accepted by the FRCC, the Registered Entity may file a request for hearing with the FRCC.



## Compliance Monitoring and Enforcement Program

### 5.3 Hearing Procedure for Compliance Hearings

The FRCC hearing procedure is set forth in **Attachment 2**.

### 5.4 Settlement Process

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

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

The FRCC shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify the FRCC and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, the FRCC will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will ~~(i)~~ report the approved settlement of the violation to FERC and if the settlement relates to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, provided, that NERC will not disclose non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure, and NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the bulk power system to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction., ~~and (ii)~~ 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. The FRCC will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

## Compliance Monitoring and Enforcement Program

The Registered Entity may appeal the hearing body's decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410. The steps for the NERC appeals process are as shown in **Figure 5.5**:<sup>12</sup>

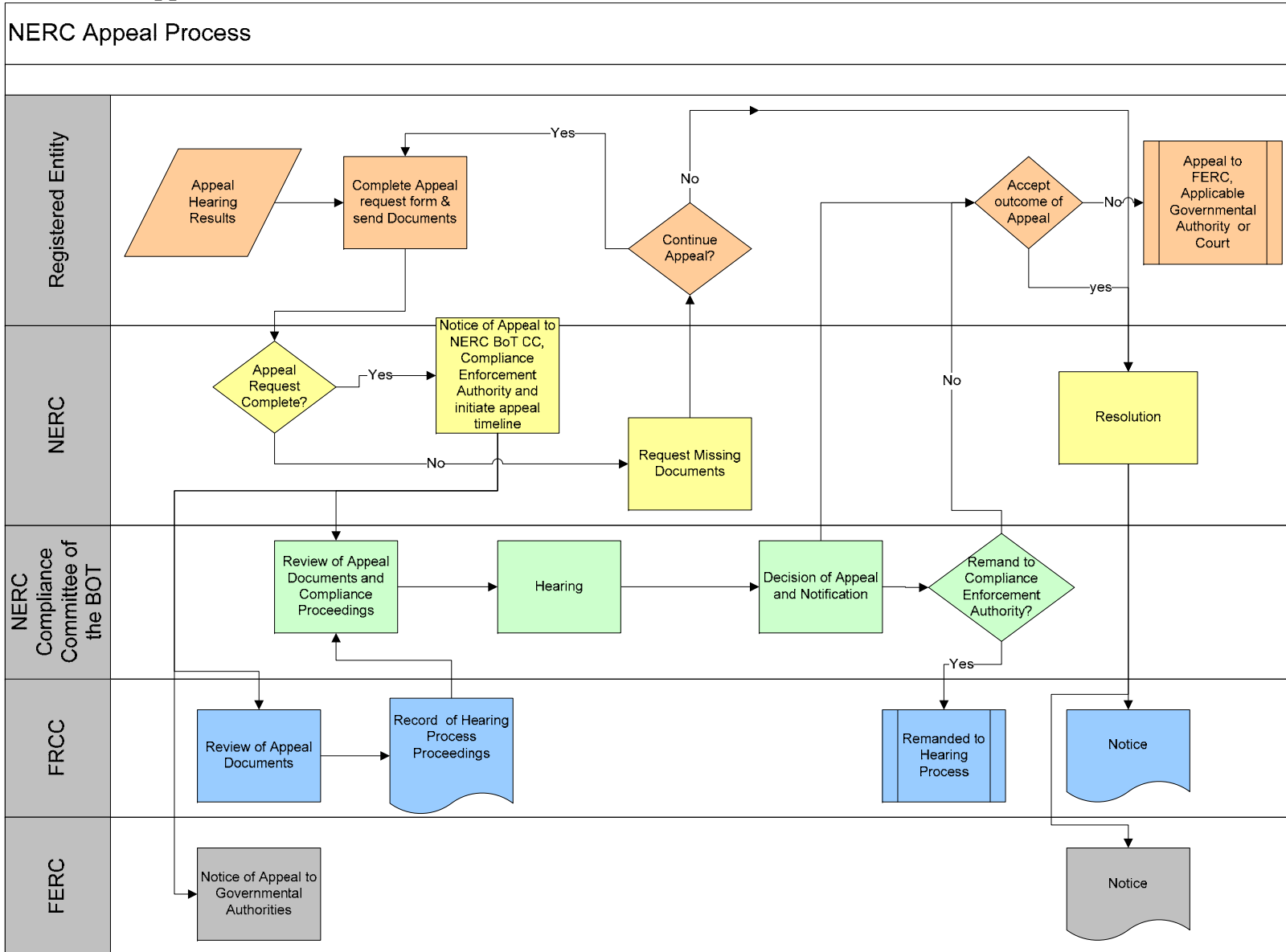
On appeal, NERC shall either affirm the FRCC decision or remand to the FRCC with reasons for its ~~decision~~remand, which may include a direction to the FRCC to revise the decision. ~~In addition, it may direct the FRCC to revise a decision that clearly conflicts with the goal of consistent national reliability enforcement or where the requirement to revise the decision is necessary for NERC's oversight of FRCC compliance activities, in which case any participant may reopen the proceedings on any issue.~~ If NERC directs the FRCC to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of the FRCC whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

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<sup>12</sup>This process generally completes within ninety (90) days of NERC's receipt of request for appeal.

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## Compliance Monitoring and Enforcement Program

### 5.6 Notice of Penalty

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

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

## 6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

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

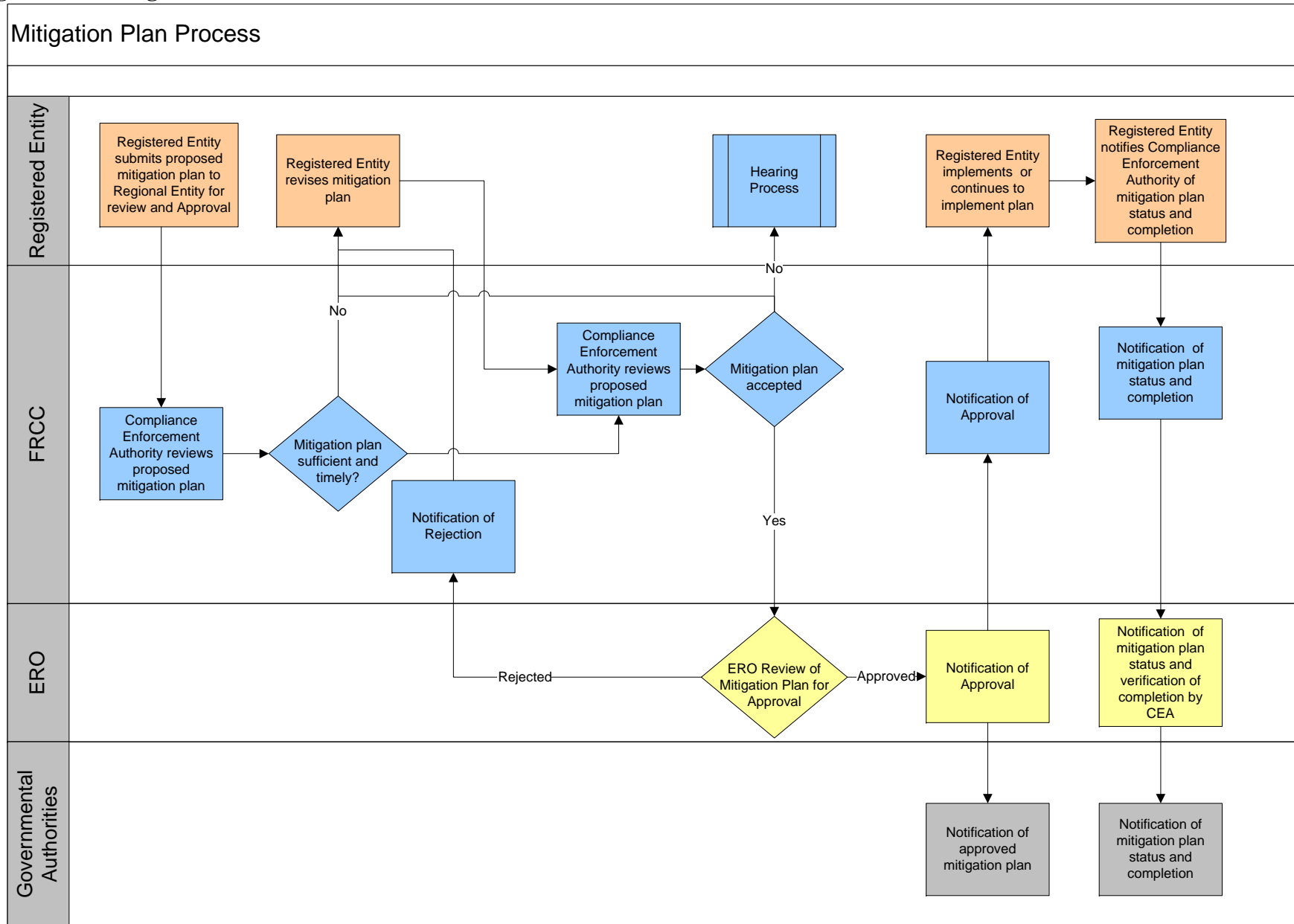
### 6.1 Requirement for Submission of Mitigation Plans

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

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

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process



## **Compliance Monitoring and Enforcement Program**

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

A Mitigation Plan shall include the following information:

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

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

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

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

## **Compliance Monitoring and Enforcement Program**

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

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

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

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

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

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

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

Unless extended by the FRCC, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. If the FRCC rejects a Mitigation Plan, the FRCC will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The FRCC will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the FRCC will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedure, by submitting to the FRCC a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the FRCC will issue a written statement accepting a Mitigation Plan it deems as appropriate.

The FRCC will notify NERC within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, [within thirty \(30\) days following its receipt of the Mitigation Plan from the FRCC](#), will notify the FRCC, which will in turn notify the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the FRCC, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. NERC will submit to ~~the~~ [CommissionFERC](#), as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. [NERC may subsequently publicly post the approved Mitigation Plan as part of the public posting of the report of the related Confirmed Violation in accordance with Section 8.0.](#)

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

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

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

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any



## **Compliance Monitoring and Enforcement Program**

violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the FRCC. In addition, the FRCC may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

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

### **6.7 Recordkeeping**

The FRCC will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Reporting, Compliance Audit, Compliance Violation Investigation, Complaint, etc.
- Date of notification of violation and sanction.
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

### **7.0 REMEDIAL ACTION DIRECTIVES**

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

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

## Compliance Monitoring and Enforcement Program

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

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

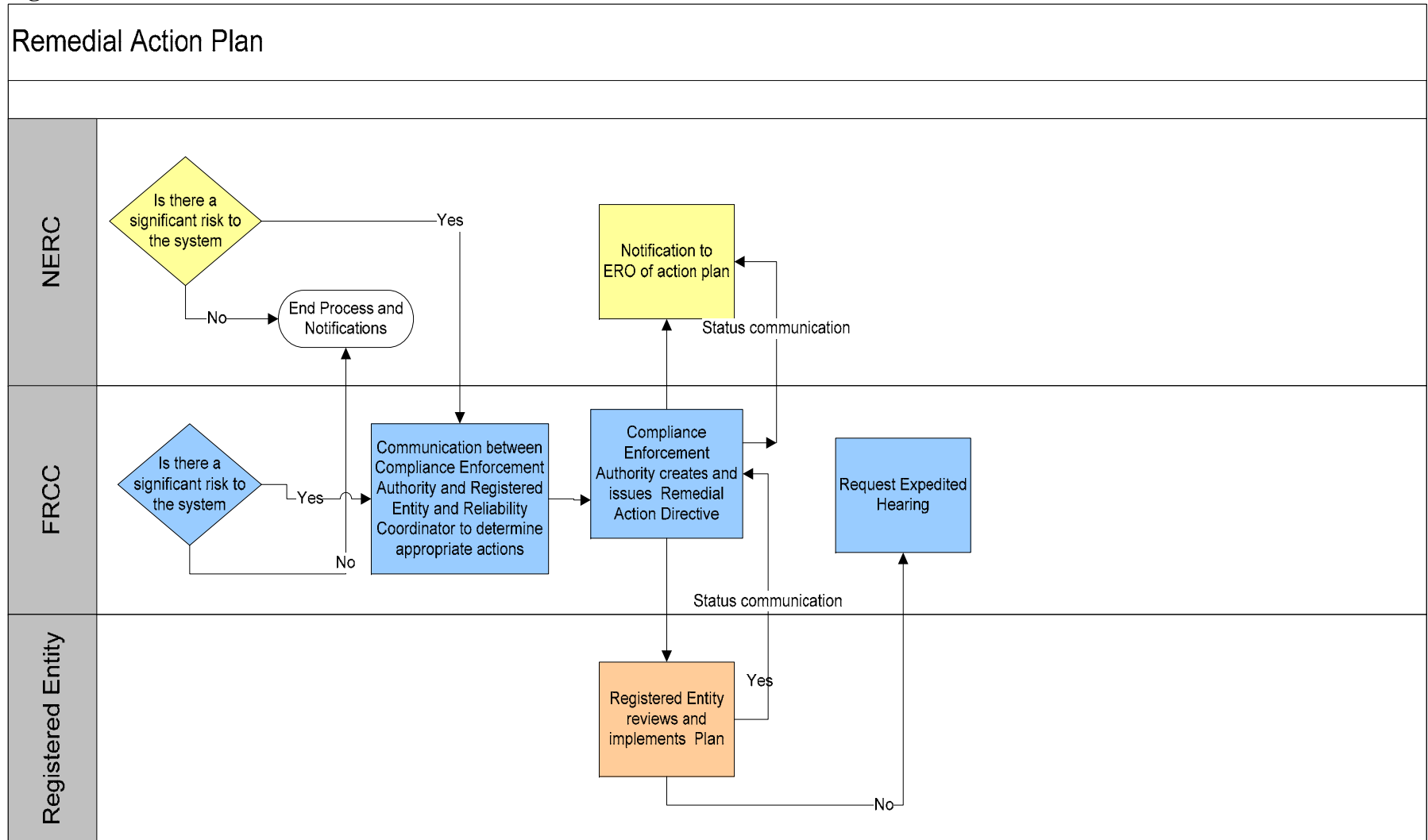
The FRCC will notify NERC within two (2) business days after issuing a Remedial Action Directive.

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

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

# Compliance Monitoring and Enforcement Program

**Figure 7.0 – Remedial Action Process**



## Compliance Monitoring and Enforcement Program

### 8.0 REPORTING AND DISCLOSURE

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

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

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

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

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

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

### 9.0 DATA RETENTION AND CONFIDENTIALITY

#### 9.1 Records Management

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

#### 9.2 Retention Requirements

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

Upon request from NERC, the FRCC will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the

## **Compliance Monitoring and Enforcement Program**

Compliance Program. In providing the information and data to NERC, the FRCC shall preserve any mark of confidentiality.

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

#### **9.3.1 Definitions**

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

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

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

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

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

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

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

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

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

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

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

A full Compliance Audit may be scheduled at this step.

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

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

ATTACHMENT 2 - HEARING PROCEDURES

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# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2 - HEARING PROCEDURES

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

The provisions set forth in this Attachment 2 (“Hearing Procedures”) shall apply to and govern practice and procedure before the FRCC in hearings in the United States conducted into (i) whether Registered Entities within the FRCC’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before ~~a~~the FRCC Board Compliance Committee (BCC)<sup>1</sup> established by the FRCC. The composition of the BCC, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the BCC on any matter brought before it for decision.

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

#### 1.1.2 Deviation

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

#### 1.1.3 Standards for Discretion

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

- a) Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness - Persons appearing in FRCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action

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<sup>1</sup> See Exhibit D of the Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council for a description of the FRCC BCC.

## Compliance Monitoring and Enforcement Program

shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.

- c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the FRCC's conflict of interest policy.
- e) Impartiality - Persons appearing before the BCC should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### 1.1.4 Interpretation

These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.

Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.

To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

### 1.1.5 Definitions

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

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

“Clerk,” as designated by the FRCC.

“FRCC's area of responsibility” means the FRCC's corporate region. The FRCC's area of responsibility is shown in Exhibit A to the delegation agreement between the FRCC and NERC.

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

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

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

“Manager of Compliance” means the Manager of Compliance of the FRCC, who is responsible for the management and supervision of Compliance Staff.

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

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

“FERC” means the Federal Energy Regulatory Commission.

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

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

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

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

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

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

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

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

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

#### 1.2.1 Contents of Filings

All filings made with BCC must contain:

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

#### 1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on

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one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.

- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

#### **Where to File**

Filings shall be made with the Clerk of the FRCC located at its principal office. The office will be open from 8:00 am – 5:00 pm local time each day except Saturday, Sunday, legal holidays and any other day declared by the FRCC.

#### **When to File**

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the BCC. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than 5:00 pm local time on the date specified.

#### **How to File**

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

#### **Number of Copies to File**

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

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### **Signature**

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

### **Verification**

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

### **Certificate of Service**

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

#### **1.2.4 Service**

##### **Service List**

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

##### **By Participants**

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



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### **By the Clerk**

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

### **Effective Date of Service**

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

**1.2.5** (Section left intentionally blank)

### **1.2.6 Extensions of Time**

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

### **1.2.7 Amendments**

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

### **1.2.8 Transcripts**

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



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what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

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

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

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

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

All hearings and oral arguments shall be held at the principal office of the FRCC unless the Hearing Officer or BCC designates a different location.

### **1.2.11 Participant Participation**

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

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

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

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

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

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation. Unless NERC provides a different

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docketing system that will be used uniformly by the FRCC, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[FRCC]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### 1.2.15 Hold Harmless

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

## 1.3 Initiation of the Hearing Process

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

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

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

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its ~~disagreement with~~ 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 ~~position on~~ rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing

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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 requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity requests the shortened hearing procedure, Compliance Staff shall submit a filing within five (5) business days of the Registered Entity's hearing request that states whether Staff agrees to use the shortened hearing procedure. If Staff makes a filing requesting the full ~~either fails to file or files but does not agree to use the shortened~~ hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

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

### 1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) business days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) business days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.

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

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

### **1.4 General Hearing Procedure**

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

Within seven (7) business days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) business days after the notice of hearing is issued. ~~The notice of hearing shall state that the Registered Entity has the option to elect either the shortened hearing procedures (Paragraph 1.3.2) or the full hearing procedures (Paragraphs 1.4 to 1.7).~~

#### **1.4.2 Hearing Officer**

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

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

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- 3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;

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- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;
- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue protective orders pursuant to Paragraph 1.5.9;
- 11) To issue initial opinions; and
- 12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 FRCC Board Compliance Committee**

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

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



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meeting the requirements of ~~pursuant to~~ Paragraph 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.

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

### 1.4.4 Interlocutory Review

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

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

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

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### **1.4.5 Disqualification**

A Hearing Officer, Technical Advisor or member of the BCC shall recuse himself or herself from a proceeding if participation would violate the FRCC's applicable conflict of interest policy.

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

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

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

### **1.4.6 Technical Advisor**

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

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



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### 1.4.7 No Ex Parte Communications

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

### 1.4.8 Appearances

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

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who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

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

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

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

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

### **1.4.10 Consolidation of Proceedings**

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

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

## **1.5 Prehearing Procedure**

### **1.5.1 Waiver of Time Limits**

~~[Intentionally left blank] A Registered Entity that elects the full hearing procedure as set forth in Paragraphs 1.4 to 1.7 shall be deemed to have waived the time limit requirements, if any, in the NERC Rules of Procedure.~~

### **1.5.2 Prehearing Conference**

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The purpose of the prehearing conference shall be to:

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

### 1.5.3 Summary Disposition

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

### 1.5.4 Status Hearings

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

### 1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be

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

### 1.5.6 Experts

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

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

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

(1) Unless otherwise provided ~~by this Rule, or~~ by order of the Hearing Officer or BCC, within five (5) business days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with the investigation any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:

(A) requests for information to the Respondent;

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

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

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

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

(F) all other documents obtained from persons not employed by the FRCC.

However, 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

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provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or BCC shall oversee the Staff's designation of documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary.

~~(2)~~(3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same ~~investigation leading~~ compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent not later than fourteen (14) business days after Staff receives such documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional documents available to the Respondent not less than ten (10) business days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

~~(3)~~(4) Nothing in subparagraph (a)(1) shall limit the discretion of the FRCC to make any other document available to the Respondent or the authority of the Hearing Officer to order the production of any other documents or information by any Participant.

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

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

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

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

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

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

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

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

### (c) Withheld Document List

~~The Hearing Officer may require Staff to submit to the Hearing Officer a list of documents withheld pursuant to Subparagraph (b)(1) or to submit to the Hearing Officer any document withheld. At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). A list of withheld documents shall also be provided by any other Participant required to produce documents, at the time the documents are required to be produced. Upon review, the Hearing Officer may order Staff to make the list or any document withheld available to the Respondent(s) for inspection and copying. A motion to require Staff to produce a list of documents withheld pursuant to Subparagraph (b)(1) shall be based upon some reason to believe that a document is being withheld in violation of these Hearing Procedures.~~

### (d) Timing of Inspection and Copying

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

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

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

### (f) Copying Costs

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

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

In the event that a document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff, or a document required to be produced by any other Participant is not produced to the Respondent no rehearing or amended decision of a proceeding already heard or decided shall be required ~~unless Respondent establishes that~~where the failure to make the document available was not harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff or another Participant to produce a document, the burden shall be on Staff or the other Participant that failed to produce the document to show that such failure was harmless error. The Hearing Officer, or, upon review, the BCC shall determine whether the failure to make the document available was harmless error.

### **1.5.8 Other Discovery Procedures**

~~In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods commonly used in civil courts, including requests for production of documents, written interrogatories, requests for admission, and depositions of witnesses under oath. All discovery that a Participant wishes to conduct, other than the inspection and copying of documents pursuant to Paragraph 1.5.7, shall be presented to the Hearing Officer at the prehearing conference or a status hearing or by written motion, and the Hearing Officer, after receiving any objections from other Participants, shall issue a ruling setting forth the discovery to be conducted and the schedule on which it shall be initiated and completed. The provisions of Subparagraphs (b) through (g) of Paragraph 1.5.7 shall apply to any such discovery. The Hearing Officer shall supervise all discovery in accordance with the following policies: (i) the opportunity to obtain full disclosure of all relevant and material documents and information shall be provided; (ii) a Participant shall be obligated to exercise due diligence in the conduct of discovery; and (iii) discovery shall not be employed by a Participant as a means of delay of the proceeding or to harass or burden any other Participant.~~

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 408 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, and requests for admissions. Unless otherwise directed by the Hearing Officer or BCC upon motion by a Participant or by the Hearing Officer, or by the BCC on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 408 and 410 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408 and 385.410, which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:



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- (a) The provisions of Subparagraphs (b) through (g) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the BCC do not have the authority to issue subpoenas to, or otherwise order or compel the appearance by or production of documents or information by, any person or entity that is not a Participant.
- (d) References to the “Commission” in Rules 402 through 408 and 410 shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b) and the second reference in Rule 410(d) shall be deemed to be to the BCC, and (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff.
- (e) Unless otherwise ordered by the Hearing Officer or BCC, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, or request for admissions, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request.
- (f) Unless otherwise ordered by the Hearing Officer or BCC, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- (g) Notwithstanding (e) and (f), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

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

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

Unless the Hearing Officer orders otherwise and with the exception of any adverse Participant examination pursuant to Paragraph 1.6.16, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that



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has not been filed as part of written testimony in the conduct of cross-examination, the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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

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

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

### 1.5.10 Protective Orders

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

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trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.

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

### 1.5.11 Pre-Evidentiary Hearing Memorandum

The Hearing Officer or the BCC may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memoranda prior to the evidentiary hearing that outline each Participant's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. The purpose of such memoranda will be to aid the Hearing Officer and BCC in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not

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set forth in a pre-evidentiary hearing memorandum. The Hearing Officer may establish page limitations on such submissions.

### **1.6 Evidentiary Hearing Procedure**

#### **1.6.1 Evidentiary Hearings**

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

#### **1.6.2 ~~Burden of Proof and~~ Order of Receiving Evidence**

~~The standard of proof in the hearing shall be by a preponderance of the evidence. The burden of persuasion on the merits of the hearing shall rest upon 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. Therefore, i~~In all proceedings Compliance Staff shall open and close.

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

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

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

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

#### **1.6.5 Exhibits**

All material offered in evidence, unless the Hearing Officer allows oral testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

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

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-

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examination of the witness and neither the Hearing Officer nor the members of the BCC have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

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

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

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

Except in exceptional cases and upon a showing of good cause, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing in accordance with the schedule established by the Hearing Officer. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the FRCC's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

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

### **1.6.9 Stipulations**

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

### **1.6.10 Official Notice**

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

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

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

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### **1.6.11 Admissibility of Evidence**

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

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

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

### **1.6.12 Offer of Proof**

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

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

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

### **1.6.14 Cross-Examination**

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

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the BCC. Any redirect examination shall be limited in scope to the witness' cross-



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examination and questions of the Hearing Officer and members of the BCC. If a member of the BCC seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

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

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

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

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

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

### **1.7.1 Briefs**

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

### **1.7.2 Other Pleadings**

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

### **1.7.3 Draft Initial Opinions**

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

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

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

### **1.7.5 Exceptions**

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



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- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### **1.7.6 Oral Argument**

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

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

### **1.7.7 Additional Hearings**

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

### **1.7.8 BCC Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the BCC shall issue its final order. Issuance of a final order shall require (i) a quorum of the BCC, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the BCC, and (ii) majority vote of the members of the BCC voting on the final order (which

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number of members voting shall not be less than a quorum). The BCC shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The BCC will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled “Final Order and Notice of Penalty”. The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The BCC shall direct the Clerk to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights to NERC or to FERC, as applicable.

### 1.7.9 The Record

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

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

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- 13) Post-hearing pleadings other than briefs;
- 14) The Hearing Officer's initial opinion;
- 15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 16) The BCC's final order, any notice of Penalty issued therewith, and the Clerk's notice transmitting the final order to the Participants;
- 17) All notices of ex parte communications; and
- 18) Any notifications of recusal and motions for disqualification of a member of the BCC or Hearing Officer of Technical Advisor and any responses or replies thereto.

### 1.7.10 Appeal

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

## 1.8 Settlement

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

## 1.9 Remedial Action Directives

### 1.9.1 Initiation of Remedial Action Directive Hearing

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

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

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

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### 1.9.2 Remedial Action Directive Hearing Procedure

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

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

- a) The Hearing Officer or the BCC will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the BCC. Oral argument shall not be held.
- f) The BCC shall issue a summary written decision within ten (10) business days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the BCC shall issue a full written decision. The written decision shall state the conclusions of the BCC with respect to the Remedial Action Directive, and shall explain the reasons for the BCC's conclusions.

## Exhibit E — Funding

### 1. Scope of activities funded through the ERO funding mechanism

FRCC shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness ~~Audit~~Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

### 2. Allocation of Costs

FRCC shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement ~~is expressly provided for in the annual business plan and budget submitted by NERC and [Regional Entity] to the Commission pursuant to 18 C.F.R. §39.4.~~ FRCC shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate FRCC's dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

### 3. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities identified by FRCC covering the NERC and FRCC budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund FRCC's costs identified in Section 1 of this Exhibit E in four equal quarterly payments.

#### 4. Application of Penalties

All penalty monies received by FRCC other than penalty monies received from an operational function or division or affiliated entity of FRCC shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of FRCC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### 5. Budget and Funding for FRCC's Non-Statutory Activities

~~In addition to If FRCC performs any functions or activities other than its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such other functions and activities being referred to herein as "~~non~~-statutory activities"), FRCC performs the following other functions and activities (such other functions and activities being referred to in this Section 5 as "non-statutory activities") shall provide its budget for such non-statutory activities to NERC at the same time that FRCC submits its annual budget request to NERC pursuant to Section 1. FRCC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of FRCC's non-statutory activities, a description of the funding sources for the non-statutory activities, and a description of the procedures FRCC will use to ensure that funding of the functions and activities listed in Section 1 of this **Exhibit E** will be kept separate from funding of the non-statutory activities. FRCC agrees that no costs of non-statutory activities are to be included in the calculation of FRCC's dues, fees, and other charges for its activities pursuant to this Agreement.~~

#### Non-Statutory Activities

The Member Services division of the FRCC provides, coordinates or administers a variety of services relating to the reliable planning and operation of the bulk power system in the FRCC Region. These services are carried out by the FRCC Planning Committee (PC) and the FRCC Operating Committee (OC), and its various subcommittees, task forces and working groups.

#### Planning Committee (PC)

The PC promotes the reliability of the bulk power system in the FRCC Region, and assesses and encourages generation and transmission adequacy. The PC, through the FRCC Regional Transmission Planning Process, provides a vehicle for ensuring that transmission planning within the FRCC will provide for the development of a robust transmission network within the FRCC Region. The activities of the PC include the activities of the following Member Services working groups: the Stability Working Group, the Transmission Working Group, the Resources Working Group, the ATG Working Group and the Fuel Reliability Working Group. The activities of these working groups pertain to the facilitated and coordinated effort for the running of engineering studies and communications in a cost effective, open and transparent manner for the members to complete common tasks to ensure future bulk power reliability. This includes any transmission planning that allows

transmission owners to meet FERC's Order 890 requirement for wide area planning and implementation of data and reporting to the Florida Public Service Commission on resource adequacy and transmission reliability.

### **Operating Committee (OC)**

The OC is responsible for the coordination, planning, operation and maintenance of reliable bulk power supply in the FRCC. Its primary reliability goals are the continuous improvement of the situational awareness of the operators interconnected within the FRCC, and ensuring that adequate physical, operational and cyber security objectives are in place for the Region's shared communications network. The OC ensures reliable operations are maintained through the development and implementation of the FRCC Security Process.

### **Operating Reliability Subcommittee (ORS)**

The ORS provides overall administration for the development and implementation of operating procedures and other reliability matters. The ORS reviews and assesses regional import and export limits, scheduled transmission outages, real-time system reliability, events analysis, information and data exchange and other reliability issues. The ORS provides formal oversight and implementation of the Security Process which establishes the reliability responsibilities of the various entities within the Region and specifically monitors the agents responsible for performing the (RC) and Operations Planning Coordinator (OPC) functions.

### **Data Exchange Working Group (DEWG)**

The DEWG, subordinate to the ORS, supports the real-time data needs of the FRCC Reliability Coordinator and other entities identified by the FRCC ORS, and for developing methodologies to facilitate the exchange of real-time, modeling, and other operational data to help assure reliable electric power system operations. Within the FRCC, all entities provide system data via the FRCC Reliability Data Link (RDL). The FRCC RDL receives all substation topology information, line flows, voltage levels, unit parameters, etc. from the operating entities on a real-time basis. Data is available to all.

### **FRCC Telecommunications Subcommittee (TS)**

The TS provides formal oversight over the TS budget which is included in the OC budget. The primary purpose of the TS is to ensure that adequate and redundant communications facilities are made available to the operating entities within the FRCC. The TS administers the FRCC hotline program, Satellite phone program, RDL program and also ensures that reliable and redundant communications are maintained with NERCNet, from a Regional communications perspective. All TS programs are in support of the RC function and are therefore non-statutory, with the exception of the FRCC satellite phone program which is a tool used by the Regional Entity to perform situational awareness and thus is budgeted as statutory.

### **Non Statutory Situation Awareness and Infrastructure Security Program**

This program maintains and enhances the situational awareness of the operators of the interconnected system by supporting the tools necessary to efficiently communicate



Electricity Sector Information Sharing and Analysis Center information within and outside of the FRCC Region. The program also ensures that the FRCC entity shared communications networks, include the appropriate physical, operational, and cyber security protections in order to function reliably.

FRCC shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs its incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:

(i) Separation of funding sources for statutory activities and non-statutory activities. The FRCC maintains a separate bank account for Statutory receivable collection. The statutory billing is done at the beginning of each quarter and an invoice is rendered to NERC only for the statutory receivable. NERC wires monies due directly into the Statutory bank account. All non-statutory receivables are deposited into a separate bank account. Member Services invoices are rendered to each member quarterly and deposited into this separate account.

(ii) Separation of costs of statutory activities and non-statutory activities. FRCC has adopted the NERC Chart of Accounts for Expenses and the NERC Rules of Procedure Categories as well as Member Services Functional Categories and utilizes these in order to correctly code each invoice received for all goods and services as well as for staff to specify where their time is spent each day for their time accounting reports. These methods are used to ensure that no statutory funds are used to pay for non-statutory expenses and that no non-statutory funds are used to pay for statutory expenses.

Each employee and officer (with the exception of the President and CEO) turns in a time sheet with their time accounted for between statutory and non-statutory functions that they personally spent their time on. Within statutory and non-statutory they further break down their time by the function areas. Each employee and officer fills out their time sheet daily and turns them in every two weeks to the Controller. The employees use the department codes to split their time according to what they did that day. These times are totaled by the Controller and Full-Time Equivalents (FTE's) for each function are calculated.

Accounting personnel route to the responsible department head all invoices pertaining to their job responsibility. The department head assigns the functional category, signs the invoices and returns it to accounting for payment processing. The accounting staff evaluates and assigns the appropriate General Ledger account number based on the Chart of Accounts and enters both the account number and the department number on the accounts payable system. Expenses such as Facilities Rent, stationary, utilities and other items of a general nature are split to each of the functions based on FTE's, on a monthly basis. Only expenses that cannot be determined to be specifically for a particular function are split on an allocated basis. Any expenses received that are for a particular function within a particular area are charged directly to that area and are not split.



All expenses are reviewed by a Department Head, an Accounting Assistant and the Controller for accuracy of coding and assignment to particular functions whether that be for Statutory or Non-statutory.

FRCC shall provide its budget for such non-statutory activities to NERC at the same time that FRCC submits its annual budget request to NERC pursuant to Section 1. FRCC's budget for non-statutory activities that is provided to NERC shall contain a detailed list of FRCC's non-statutory activities, and a description of the funding sources for the non-statutory activities, ~~and a description of the procedures FRCC will use to ensure that funding of the functions and activities listed in Section 1 of this Exhibit E will be kept separate from funding of the non-statutory activities.~~ FRCC agrees that no costs of non-statutory activities are to be included in the calculation of FRCC's dues, fees, and other charges for its statutory activities. ~~pursuant to this Agreement.~~