

ATTACHMENT 1

**REVISED AMENDED AND RESTATED
PRO FORMA DELEGATION AGREEMENT**

ATTACHMENT 1A: CLEAN VERSION

ATTACHMENT 1B: REDLINED VERSION

ATTACHMENT 1A

CLEAN VERSION

REVISED 7-15-08
For March 21 FERC Order

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND [REGIONAL ENTITY]**

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 [REGIONAL ENTITY], 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 [REGIONAL ENTITY] 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;

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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 [REGIONAL ENTITY] 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, [REGIONAL ENTITY] [is/is not] organized on an Interconnection-wide basis and therefore [is/is not] entitled to the rebuttable presumptions accorded such an entity;

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WHEREAS, NERC will work through [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY], 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 [REGIONAL ENTITY] to propose and enforce Reliability Standards pursuant to the Act.

(d) [REGIONAL ENTITY] Rules means the bylaws, a rule of procedure or other organizational rule or protocol of [REGIONAL ENTITY].

(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, [REGIONAL ENTITY] hereby represents and warrants to NERC that:

(i) [REGIONAL ENTITY] 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. [REGIONAL ENTITY] is governed in accordance with its bylaws by [*select appropriate*: an independent board/a balanced stakeholder board/ a combination independent and balanced stakeholder board]. Pursuant to these bylaws, no two industry sectors can control any [REGIONAL ENTITY] decision and no single industry sector can veto any [REGIONAL ENTITY] decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**¹, and as so attached are in full force and effect. No other such corporate governance documents are binding upon [REGIONAL ENTITY].

(ii) As set forth in **Exhibit C** hereto², [REGIONAL ENTITY] has developed a standards development procedure, which provides the process that [REGIONAL ENTITY] may use to develop Regional Reliability Standards [and Regional Variances, if the regional entity is organized on an Interconnection-wide basis] that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto³, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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

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

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

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

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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.

(a) During the term of this Agreement, [REGIONAL ENTITY] shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the [REGIONAL ENTITY] 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 [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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.

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(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both [REGIONAL ENTITY] and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, [REGIONAL ENTITY] 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, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards [and Regional Variances, if Regional Entity is organized on an Interconnection-wide basis] through [REGIONAL ENTITY]'s process as set forth in **Exhibit C**. Proposals approved through [REGIONAL ENTITY]'s process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its

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reasons. [REGIONAL ENTITY] 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 [INTERCONNECTION-WIDE REGIONAL ENTITY] 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 [INTERCONNECTION-WIDE REGIONAL ENTITY] during NERC's review of the proposal.

6. Enforcement.

(a) In connection with its delegated authority pursuant to this Agreement, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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. [REGIONAL ENTITY] 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, [REGIONAL ENTITY] agrees to comply with the NERC Rules in implementing this program.

(b) [REGIONAL ENTITY] 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

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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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] shall be filed with NERC, in accordance with the NERC Rules.

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

(f) [REGIONAL ENTITY] 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, [REGIONAL ENTITY] 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 [REGIONAL ENTITY]'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.

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(i) [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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. [REGIONAL ENTITY] 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 [REGIONAL ENTITY] activities necessary for [REGIONAL ENTITY] 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 [REGIONAL ENTITY] without providing appropriate funding to carry out such mandates;

(b) [REGIONAL ENTITY] and NERC agree that costs of carrying out [REGIONAL ENTITY]'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 [REGIONAL ENTITY] and approved by NERC and the Commission. If [REGIONAL ENTITY] proposes to use a formula other than net energy for load beginning in the following

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year, [REGIONAL ENTITY] 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 [Regional Entity] 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 [REGIONAL ENTITY] with the form for budget submittal no later than April 30 of the prior year.

(e) [REGIONAL ENTITY] shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other [REGIONAL ENTITY] 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 [REGIONAL ENTITY] budget submission shall include supporting materials, including [REGIONAL ENTITY]'s complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. 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. [REGIONAL ENTITY] 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.

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(f) [REGIONAL ENTITY]'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 [REGIONAL ENTITY]'s budget for meeting its responsibilities under the Delegation Agreement.

(h) [REGIONAL ENTITY] 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) [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY].

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. [REGIONAL ENTITY] may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit [REGIONAL ENTITY] from contracting with other entities to assist it in carrying out its Delegated Authority, provided [REGIONAL ENTITY] 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 XX, 2007, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] 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 [REGIONAL ENTITY]’s Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not

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take effect until such transition has been effected, unless the transition period exceeds one year, at which time [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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. [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY]'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 [REGIONAL ENTITY] or NERC is found liable for gross negligence or intentional misconduct, in which case [REGIONAL ENTITY] or NERC

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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.

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16. Amendments to the NERC Rules. NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed. To the extent [REGIONAL ENTITY] 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 [REGIONAL ENTITY] under this Agreement, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] to NERC and the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

17. Dispute Resolution. In the event a dispute arises under this Agreement between NERC and [REGIONAL ENTITY], 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:

If to [REGIONAL ENTITY]:

North American Electric
Reliability Corporation

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

Attn:
Facsimile:

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 [REGIONAL ENTITY] 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.

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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

[REGIONAL ENTITY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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Exhibit A — Regional Boundaries

Exhibit A to the delegation agreement for each Regional Entity receiving Delegated Authority shall describe the geographic or electrical boundaries covered by the proposed delegation of authority. **Exhibit A** for each Regional Entity shall reflect coordination with neighboring Regional Entities, as appropriate, to ensure that all relevant areas are either included within the geographic boundaries of a Regional Entity or specifically identified as not being within the geographic boundaries of any Regional Entity.

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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 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]

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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

Applicability	<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

Measure(s)	<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

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

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of [Fill in Name of Regional Entity]

[Fill in Name of Regional Entity] 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 [Fill in Name of Regional Entity]'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

[Describe each deviation from the NERC Compliance Monitoring and Enforcement Program required by the Regional Entity. Identify each NERC Compliance Monitoring and Enforcement Program section from which a deviation is required by the Regional Entity. For each section describe how the Regional Entity will implement its alternative, why the alternative is necessary, and how that alternative meets the obligations set forth in the NERC Rules of Procedure and Section 39.7 of FERC Order 672. Separate attachments to this **Exhibit D** may be used if the information is voluminous.]

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

[Fill in Name of Regional Entity] 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 either [Fill in Name of Regional Entity]'s board or a balanced compliance panel reporting directly to [Fill in Name of Regional Entity]'s board. [Fill in Name of Regional Entity]'s hearing body is [its board] [if not the board, insert the name of the committee or group serving as the hearing body].

[If the hearing body is a compliance panel other than the board, provide here a description of how the members of the compliance panel are selected and the qualifications to be selected for the compliance panel.]

3.0 OTHER DECISION-MAKING BODIES

If [Fill in Name of Regional Entity] uses other decision-making bodies within its compliance program, provide here a description of the function of that body to the extent not described elsewhere in the Agreement or exhibits, how the members of that body are selected, and the qualifications to be selected for that body.]

Exhibit E — Funding

1. Scope of activities funded through the ERO funding mechanism

[Regional Entity] 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

[Regional Entity] 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. [Regional Entity] 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 [Regional Entity's] dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

3. Collection of Funding

[IF NERC WILL BILL AND COLLECT ASSESSMENTS DIRECTLY FROM LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

(a) NERC shall submit invoices to the load-serving entities identified by [Regional Entity] covering the NERC and [Regional Entity] budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

[IF THE REGIONAL ENTITY WILL ACT AS THE BILLING AND COLLECTION AGENT ON BEHALF OF NERC TO BILL AND COLLECT ASSESSMENTS FROM LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

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(a) NERC and [Regional Entity] agree that [Regional Entity] shall act as the billing and collection agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities (or such other entities as agreed by NERC and [Regional Entity]). [Regional Entity] agrees that it shall (i) issue all invoices to load-serving entities and other entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoices; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC in a timely manner, as follows: Once per week until all billings are collected, [Regional Entity] will electronically transfer to NERC, in immediately available funds, all payments received by [Regional Entity] from load-serving entities or other entities during that week for payment of invoices. On the same day that [Regional Entity] makes each electronic transfer of funds to NERC, [Regional Entity] shall send an e-mail to the Chief Financial Officer of NERC detailing the collections being transmitted, including a listing of the load-serving entities or other entities from which payments were collected and the amount collected from each entity.

[Regional Entity] agrees that it shall not in any way use its position as billing and collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement program and other compliance and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of [Regional Entity's] budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this Agreement.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund [Regional Entity's] costs identified in Section 1 of this Exhibit E in four equal quarterly payments.

4. Application of Penalties

All penalty monies received by [Regional Entity], other than penalty monies received from an operational function or division or affiliated entity of [Regional Entity] 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 [Regional Entity] 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 [Regional Entity's] Non-Statutory Activities

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such functions and activities referred to in this Section 5 as "statutory activities"), [Regional Entity] performs the following other functions and activities (such other functions and

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activities being referred to in this Section 5 as "non-statutory activities"): [List and describe all non-statutory activities performed by Regional Entity, or state "None".]

[Regional Entity] 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: [List and described the methods and procedures Regional Entity employs to keep costs and funding of statutory activities separate from costs and funding of non-statutory activities, including at a minimum a description of how Regional Entity's bank accounts and receivables/payables procedures are set up for both statutory and non-statutory functions and a description of how Regional Entity ensures each employee involved in both statutory and non-statutory functions keeps accurate time records reflecting his/her activities. If the necessary descriptions are lengthy they may be provided in a separate attachment labeled "Attachment E-1", and state here "See Attachment E-1." If Regional Entity has listed no non-statutory functions in the preceding paragraph, state here "Not applicable."]

[Regional Entity] shall provide its budget for such non-statutory activities to NERC at the same time that [Regional Entity] submits its annual budget request to NERC pursuant to Section 1. [Regional Entity's] budget for non-statutory activities that is provided to NERC shall contain a detailed list of [Regional Entity's] non-statutory activities and a description of the funding sources for the non-statutory activities. [Regional Entity] agrees that no costs of non-statutory activities are to be included in the calculation of [Regional Entity's] dues, fees, and other charges for its statutory activities.

ATTACHMENT 1B
REDLINED VERSION

MARKED FOR REVISIONS 7-15-08
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AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND [REGIONAL ENTITY]

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 [REGIONAL ENTITY], 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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, [REGIONAL ENTITY] [is/is not] organized on an Interconnection-wide basis and therefore [is/is not] entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY], 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 [REGIONAL ENTITY] to propose and enforce Reliability Standards pursuant to the Act.

(d) [REGIONAL ENTITY] Rules means the bylaws, a rule of procedure or other organizational rule or protocol of [REGIONAL ENTITY].

(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.

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2. Representations.

(a) For purposes of its Delegated Authority, [REGIONAL ENTITY] hereby represents and warrants to NERC that:

(i) [REGIONAL ENTITY] 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. [REGIONAL ENTITY] is governed in accordance with its bylaws by [*select appropriate*: an independent board/a balanced stakeholder board/ a combination independent and balanced stakeholder board]. Pursuant to these bylaws, no two industry sectors can control any [REGIONAL ENTITY] decision and no single industry sector can veto any [REGIONAL ENTITY] decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**¹, and as so attached are in full force and effect. No other such corporate governance documents are binding upon [REGIONAL ENTITY].

(ii) As set forth in **Exhibit C** hereto², [REGIONAL ENTITY] has developed a standards development procedure, which provides the process that [REGIONAL ENTITY] may use to develop Regional Reliability Standards [and Regional Variances, if the regional entity is organized on an Interconnection-wide basis] that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto³, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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

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

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

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

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.

(a) During the term of this Agreement, [REGIONAL ENTITY] shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the [REGIONAL ENTITY] 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 [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and [REGIONAL ENTITY] 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 [REGIONAL ENTITY] for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both [REGIONAL ENTITY] and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, [REGIONAL ENTITY] 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, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards [and Regional Variances, if Regional Entity is organized on an Interconnection-wide basis] through [REGIONAL ENTITY]'s process as set forth in **Exhibit C**. Proposals approved through [REGIONAL ENTITY]'s process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its

reasons. [REGIONAL ENTITY] 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 [INTERCONNECTION-WIDE REGIONAL ENTITY] 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 [INTERCONNECTION-WIDE REGIONAL ENTITY] during NERC's review of the proposal.

6. Enforcement.

(a) In connection with its delegated authority pursuant to this Agreement, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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. [REGIONAL ENTITY] 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, [REGIONAL ENTITY] agrees to comply with the NERC Rules in implementing this program.

(b) [REGIONAL ENTITY] 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

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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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] shall be filed with NERC, in accordance with the NERC Rules.

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

(f) [REGIONAL ENTITY] 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, [REGIONAL ENTITY] 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 [REGIONAL ENTITY]'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.

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(i) [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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. [REGIONAL ENTITY] 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 [REGIONAL ENTITY] activities necessary for [REGIONAL ENTITY] 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 [REGIONAL ENTITY] without providing appropriate funding to carry out such mandates;

(b) [REGIONAL ENTITY] and NERC agree that costs of carrying out [REGIONAL ENTITY]'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 \[REGIONAL ENTITY\] and approved by NERC and the Commission. If \[REGIONAL ENTITY\] proposes to use a formula other than net energy for load beginning in the following](#)

year, [REGIONAL ENTITY] 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 [Regional Entity] to the Commission pursuant to 18 C.F.R. §39.4 for such year, as set forth in Exhibit E; [P25]

(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 [REGIONAL ENTITY] with the form for budget submittal no later than April 30 of the prior year.

(e) [REGIONAL ENTITY] shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other [REGIONAL ENTITY] 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 [REGIONAL ENTITY] budget submission shall include supporting materials, including [REGIONAL ENTITY]'s complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. 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. [REGIONAL ENTITY] 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. [P31]

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(f) [REGIONAL ENTITY]'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 [REGIONAL ENTITY]'s budget for meeting its responsibilities under the Delegation Agreement.

(h) [REGIONAL ENTITY] 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) [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY].

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. [REGIONAL ENTITY] may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit [REGIONAL ENTITY] from contracting with other entities to assist it in carrying out its Delegated Authority, provided [REGIONAL ENTITY] retains control and responsibility for such Delegated Authority.

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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 XX, 2007](#), prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that [REGIONAL ENTITY] continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If [REGIONAL ENTITY] 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 [REGIONAL ENTITY]’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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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. [REGIONAL ENTITY] 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 [REGIONAL ENTITY] 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 [REGIONAL ENTITY]'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 [REGIONAL ENTITY] or NERC is found liable for gross negligence or intentional misconduct, in which case [REGIONAL ENTITY] 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.

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16. Amendments to the NERC Rules. NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of [REGIONAL ENTITY] under this Agreement without first obtaining the consent of [REGIONAL ENTITY], which consent shall not be unreasonably withheld or delayed. To the extent [REGIONAL ENTITY] 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 [REGIONAL ENTITY] under this Agreement, [REGIONAL ENTITY] 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 [REGIONAL ENTITY] to NERC and the Commission, or at such other time as may be mutually agreed by [REGIONAL ENTITY] and NERC.

17. Dispute Resolution. In the event a dispute arises under this Agreement between NERC and [REGIONAL ENTITY], 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:

If to [REGIONAL ENTITY]:

North American Electric
Reliability Corporation

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

Attn:
Facsimile:

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 [REGIONAL ENTITY] 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.

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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

[REGIONAL ENTITY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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Exhibit A — Regional Boundaries

Exhibit A to the delegation agreement for each Regional Entity receiving Delegated Authority shall describe the geographic or electrical boundaries covered by the proposed delegation of authority. **Exhibit A** for each Regional Entity shall reflect coordination with neighboring Regional Entities, as appropriate, to ensure that all relevant areas are either included within the geographic boundaries of a Regional Entity or specifically identified as not being within the geographic boundaries of any Regional Entity.

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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 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.

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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.

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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.

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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]

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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.

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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.

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COMMON ATTRIBUTE 32

Applicability	<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

Measure(s)	<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

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

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of [Fill in Name of Regional Entity]

[Fill in Name of Regional Entity] 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 [Fill in Name of Regional Entity]'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

[Describe each deviation from the NERC Compliance Monitoring and Enforcement Program required by the Regional Entity. Identify each NERC Compliance Monitoring and Enforcement Program section from which a deviation is required by the Regional Entity. For each section describe how the Regional Entity will implement its alternative, why the alternative is necessary, and how that alternative meets the obligations set forth in the NERC Rules of Procedure and Section 39.7 of FERC Order 672. Separate attachments to this **Exhibit D** may be used if the information is voluminous.]

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

[Fill in Name of Regional Entity] 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 either [Fill in Name of Regional Entity]'s board or a balanced compliance panel reporting directly to [Fill in Name of Regional Entity]'s board. [Fill in Name of Regional Entity]'s hearing body is [its board] [if not the board, insert the name of the committee or group serving as the hearing body].

[If the hearing body is a compliance panel other than the board, provide here a description of how the members of the compliance panel are selected and the qualifications to be selected for the compliance panel.]

3.0 OTHER DECISION-MAKING BODIES

If [Fill in Name of Regional Entity] uses other decision-making bodies within its compliance program, provide here a description of the function of that body to the extent not described elsewhere in the Agreement or exhibits, how the members of that body are selected, and the qualifications to be selected for that body.]

Exhibit E — Funding

1. Scope of activities funded through the ERO funding mechanism

[Regional Entity] 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

[Regional Entity] 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.~~ [P25] [Regional Entity] 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 [Regional Entity's] dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

3. Collection of Funding

[IF NERC WILL BILL AND COLLECT ASSESSMENTS DIRECTLY FROM LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

(a) NERC shall submit invoices to the load-serving entities identified by [Regional Entity] covering the NERC and [Regional Entity] budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

[IF THE REGIONAL ENTITY WILL ACT AS THE BILLING AND COLLECTION AGENT ON BEHALF OF NERC TO BILL AND COLLECT ASSESSMENTS FROM

LOAD-SERVING ENTITIES IN REGIONAL ENTITY'S REGION, USE THE FOLLOWING TEXT FOR SECTION 3(a):]

(a) NERC and [Regional Entity] agree that [Regional Entity] shall act as the billing and collection agent on behalf of NERC to bill and collect assessments for the costs of activities under the Act from load-serving entities (or such other entities as agreed by NERC and [Regional Entity]). [Regional Entity] agrees that it shall (i) issue all invoices to load-serving entities and other entities in a prompt and timely manner after receipt from NERC of the information needed to issue the invoices; (ii) exercise commercially reasonable efforts to collect invoices that are not paid as of the due date(s); and (iii) transfer all funds collected to NERC in a timely manner, as follows: Once per week until all billings are collected, [Regional Entity] will electronically transfer to NERC, in immediately available funds, all payments received by [Regional Entity] from load-serving entities or other entities during that week for payment of invoices. On the same day that [Regional Entity] makes each electronic transfer of funds to NERC, [Regional Entity] shall send an e-mail to the Chief Financial Officer of NERC detailing the collections being transmitted, including a listing of the load-serving entities or other entities from which payments were collected and the amount collected from each entity.

[Regional Entity] agrees that it shall not in any way use its position as billing and collection agent for NERC to attempt to influence NERC's policies or decisions on matters relating to adoption of reliability standards (including regional standards and differences), administration of the compliance monitoring and enforcement program and other compliance and enforcement matters, determination and imposition of penalties and sanctions, budgeting matters including review and approval of [Regional Entity's] budgets and business plans, or any other NERC decisions, including by issuing invoices, engaging in collection activities or transferring funds collected to NERC in an untimely manner or other than in accordance with this Agreement.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund [Regional Entity's] costs identified in [Section 1 of](#) this Exhibit E in four equal quarterly payments. [\[P 33\]](#)

4. Application of Penalties

All penalty monies received by [Regional Entity], other than penalty monies received from an operational function or division or affiliated entity of [Regional Entity] 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 [Regional Entity] 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 [Regional Entity's] Non-Statutory Activities

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~~In addition to~~ If [Regional Entity] 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 functions and activities referred to in this Section 5 as "statutory activities"), [Regional Entity] performs the following other functions and activities (such other functions and activities being referred to ~~herein~~ in this Section 5 as "non-statutory activities"); [List and describe all non-statutory activities performed by Regional Entity, or state "None".] [P 33]

[Regional Entity] 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: [List and described the methods and procedures Regional Entity employs to keep costs and funding of statutory activities separate from costs and funding of non-statutory activities, including at a minimum a description of how Regional Entity's bank accounts and receivables/payables procedures are set up for both statutory and non-statutory functions and a description of how Regional Entity ensures each employee involved in both statutory and non-statutory functions keeps accurate time records reflecting his/her activities. If the necessary descriptions are lengthy they may be provided in a separate attachment labeled "Attachment E-1", and state here "See Attachment E-1." If Regional Entity has listed no non-statutory functions in the preceding paragraph, state here "Not applicable."] [P 33]

[Regional Entity] shall provide its budget for such non-statutory activities to NERC at the same time that [Regional Entity] submits its annual budget request to NERC pursuant to Section 1. [Regional Entity's] budget for non-statutory activities that is provided to NERC shall contain a detailed list of [Regional Entity's] non-statutory activities, and a description of the funding sources for the non-statutory activities, ~~and a description of the procedures [Regional Entity] 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.~~ [Regional Entity] agrees that no costs of non-statutory activities are to be included in the calculation of [Regional Entity's] dues, fees, and other charges for its statutory activities ~~pursuant to this Agreement.~~ [P 33]