

**UNITED STATES OF AMERICA**  
**Before the**  
**FEDERAL ENERGY REGULATORY COMMISSION**

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION** ) **Docket No. RR06-1-017**  
)

**DELEGATION AGREEMENT BETWEEN THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND RELIABILITYFIRST CORPORATION** ) **Docket No. RR07-4-004**  
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**MOTION OF THE**  
**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**  
**TO FILE CORRECTED ATTACHMENT 7 TO**  
**COMPLIANCE FILING OF THE**  
**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**  
**IN RESPONSE TO MARCH 21, 2008 ORDER**

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August 28, 2008

The North American Electric Reliability Corporation (“NERC”) moves for leave to file a corrected version of Attachment 7 to the “Compliance Filing of the North American Electric Reliability Corporation to March 21 Order,” filed July 21, 2008 in these dockets (“July 21 Compliance Filing”). The corrected Attachment 7 is being submitted with to this motion. Attachment 7 consists of clean (Attachment 7A) and redlined (Attachment 7B) versions of the revised Amended and Restated Delegation Agreement between NERC and ReliabilityFirst Corporation (“NERC-ReliabilityFirst Delegation Agreement”). The corrected Attachment 7 corrects errors in the Amended and Restated Bylaws of ReliabilityFirst Corporation that are included in Exhibit B to the NERC-ReliabilityFirst Delegation Agreement submitted in original Attachment 7.

Original Attachment 7 included in the July 21 Compliance Filing was intended only to present revisions to the NERC-ReliabilityFirst Delegation Agreement that are being made in response to directives in the Commission’s March 21, 2008 Order.<sup>1</sup> However, original Attachment 7 also included other amendments to the ReliabilityFirst Bylaws, not adopted in response to the March 21 Order, that have been approved by the membership of ReliabilityFirst and by the NERC Board of Trustees, but as of July 21, 2008 had not been filed with the Commission for approval pursuant to 18 C.F.R. §39.10. These unrelated amendments were reflected in original Attachments 7A and 7B as though they had already been approved by the Commission (*i.e.*, in Attachment 7B these amendments were not shown as redlined).

The unrelated amendments have been removed from corrected Attachments 7A and 7B. As a result, corrected Attachments 7A and 7B incorporate only amendments to the ReliabilityFirst Bylaws (as approved in the March 21 Order) that are being proposed in response

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<sup>1</sup> *North American Electric Reliability Corp., et. al, Order Addressing Revised Delegation Agreements*, 122 FERC ¶ 61,245 (2008) (“March 21 Order”).

to directives in the March 21 Order.<sup>2</sup> Following are the unrelated amendments to the ReliabilityFirst Bylaws that were included in original Attachment 7 but are removed from corrected Attachment 7:

1. Amendment to the definition of “Adjunct Member” in §1.2.
2. Amendment to the definition of “Related Party” in §1.27. (This definition was formerly §1.26 but is being renumbered due to other amendments to Article I of the Bylaws that are being made in response to directives in the March 21 Order.)
3. Table of Contents: Corrected title of §5.9.2 to match the section title in the body of the Bylaws.
4. §6.6.2: Corrected cross-reference from §6.5.3 to §6.6.3.
5. §6.6.3(a): Corrected cross-reference from §17.1 to §19.1.
6. §16.1: Deleted extraneous word “Standards” from title of section.

As noted, these amendments have been approved by the membership of ReliabilityFirst and by the NERC Board, but for reasons other than compliance with directives in the March 21 Order.

On August 28, 2008, NERC filed a separate petition with the Commission for approval of the unrelated amendments to the ReliabilityFirst Bylaws, pursuant to 18 C.F.R. §39.10.

Other than removal of the unrelated amendments to the ReliabilityFirst Bylaws and notation of “Corrected 8-28-2008” on the cover sheets, there are no other changes from original Attachment 7 to corrected Attachment 7.

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<sup>2</sup> In the March 21 Order, the Commission approved the revised NERC-ReliabilityFirst Delegation Agreement, including the amended ReliabilityFirst Bylaws included in Exhibit B to the Delegation Agreement, that were submitted in the *Compliance Filing of the North American Electric Reliability Corporation in Response to April 19, 2007 Order*, filed October 30, 2007 in Docket Nos. RR06-1-004 *et. al.*, to be effective 15 days following the March 21 Order (March 21 Order at P 180), but also directed further revisions to the Delegation Agreement.

WHEREFORE, NERC respectfully requests leave to submit the corrected version of Attachment 7 to the July 21 Compliance Filing that is submitted with this filing.

Respectfully submitted,

Rick Sergel  
President and Chief Executive Officer  
David N. Cook\*  
Vice President and General Counsel  
North American Electric Reliability  
Corporation  
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\*Persons included on the Commission's  
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**CERTIFICATE OF SERVICE**

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

Dated at Chicago, Illinois this 28th day of August, 2008.

/s/ Owen E. MacBride  
Owen E. MacBride  
*Attorney for*  
*North American Electric Reliability Corporation*

**DOCKET NOS. RR06-1-017 AND RR07-4-004**

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

**ATTACHMENT 7  
CORRECTED 8-28-2008**

**REVISED AMENDED AND RESTATED DELEGATION AGREEMENT  
BETWEEN NERC AND  
RELIABILITYFIRST CORPORATION**

**ATTACHMENT 7A: CLEAN VERSION**

**ATTACHMENT 7B: REDLINED VERSION**



320 SPRINGSIDE DRIVE, SUITE 300, AKRON, OH 44333  
TELEPHONE: (330) 456-2488 FACSIMILE: (330) 456-3648

July 1, 2008

Mr. Richard Sergel  
President  
North American Electric Reliability Corporation  
Princeton Forrestal Village  
116-390 Village Boulevard  
Princeton, New Jersey 08540-5721

Dear Rick:

A revised and amended Regional Delegation Agreement (RDA) between ReliabilityFirst Corporation and NERC is attached to this letter. We believe this new agreement appropriately responds to the directions and guidance given to us by FERC when they approved our existing RDA with NERC in March of this year. We will continue to operate and support the ERO under the existing RDA until such time as the Commission approves the new one. At that time, we will be prepared to execute and operate under the new RDA.

Sincerely,

*Timothy R. Gallagher*

Timothy R Gallagher  
President  
ReliabilityFirst Corporation

CC: ReliabilityFirst Board of Directors  
Steve Gray

**ATTACHMENT 7A**

**CLEAN VERSION**

**CORRECTED 8-28-2008**



**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND RELIABILITYFIRST CORPORATION**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this \_\_\_ day of \_\_\_\_\_ 20XX, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the ReliabilityFirst Corporation (ReliabilityFirst), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and ReliabilityFirst may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

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

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

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

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

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

(A) The Regional Entity is governed by —

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reliability*First* Rules means the bylaws, a rule of procedure or other organizational rule or protocol of Reliability*First*.

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

## 2. Representations.

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

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

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

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

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

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

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

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

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

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

**3. Covenants.**

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

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

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

**4. Delegation of Authority.**

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

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

**5. Reliability Standards.**

(a) In connection with its Delegated Authority, ReliabilityFirst shall be entitled to:

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

(ii) develop Regional Reliability Standards through ReliabilityFirst's process as set forth in **Exhibit C**. Proposals approved through ReliabilityFirst's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. ReliabilityFirst may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

**6. Enforcement.**

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

(b) ReliabilityFirst shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and ReliabilityFirst shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

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

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

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

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

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

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review ReliabilityFirst's compliance enforcement program to ensure that: (i) the program

meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

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

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

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

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

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

(b) ReliabilityFirst and NERC agree that costs of carrying out ReliabilityFirst's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is proposed by ReliabilityFirst



and approved by NERC and the Commission. If ReliabilityFirst proposes to use a formula other than net energy for load beginning in the following year, ReliabilityFirst shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and ReliabilityFirst to the Commission pursuant to 18 C.F.R. §39.4 for such year;

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

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

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

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

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

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

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

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

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

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

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the “Default Notice”). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

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

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

transition has been effected, unless the transition period exceeds one year, at which time ReliabilityFirst may unilaterally terminate.

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

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

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

indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

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

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

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

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

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

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

If to NERC:

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

If to ReliabilityFirst:

ReliabilityFirst Corporation  
320 Springside Drive  
Suite 300  
Akron, OH 44333  
Attn: Timothy R. Gallagher  
Facsimile: (330) 456-3648

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

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

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

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

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

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

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

RELIABILITYFIRST  
CORPORATION

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

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

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

Name: Timothy R. Gallagher

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

Title: President

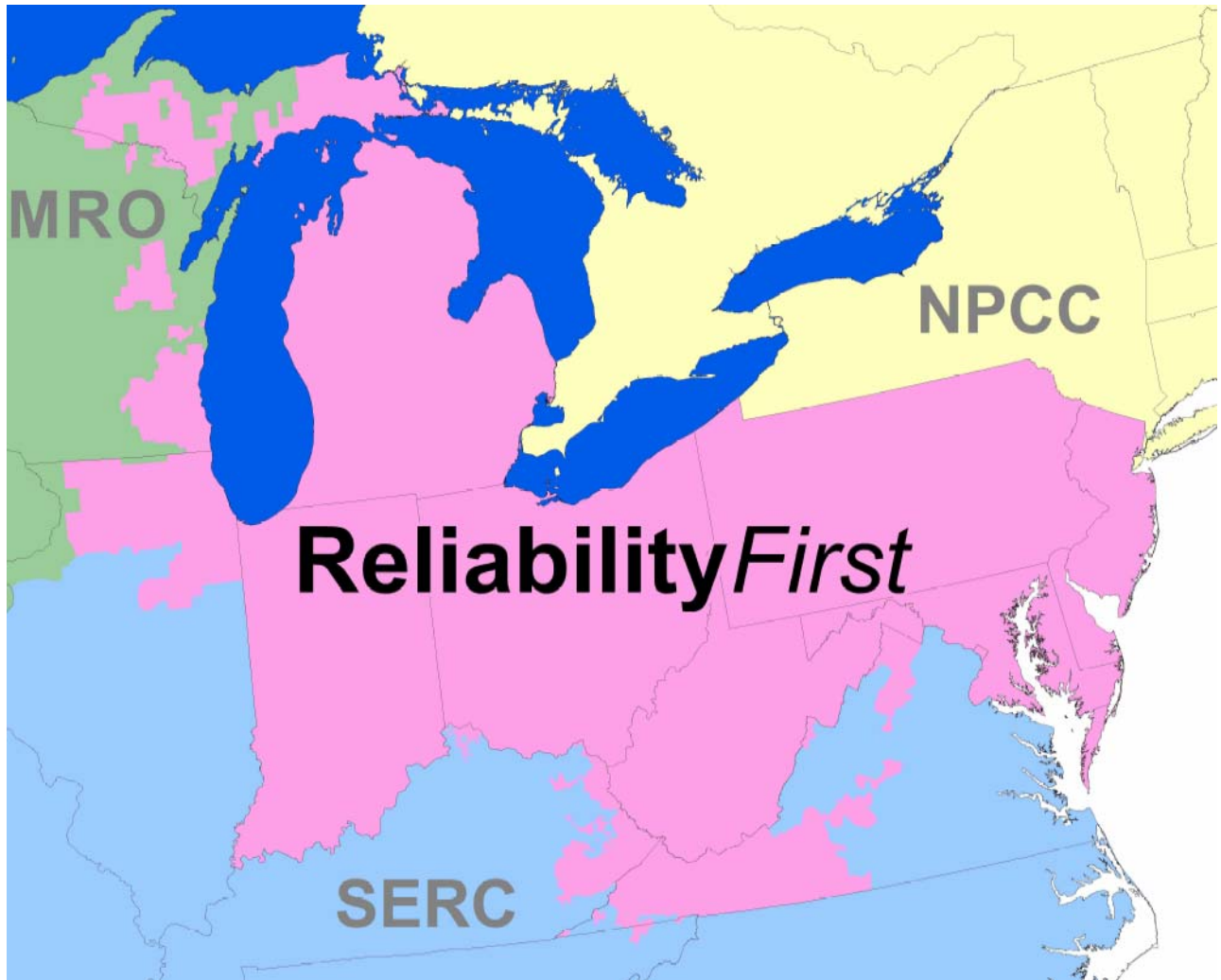
Date: \_\_\_\_\_

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



## Exhibit A - Boundaries of Delegation Agreement

The Boundaries of **ReliabilityFirst** Corporation (**ReliabilityFirst**) are defined by the service territories of Load Serving Entities (LSEs) and include all of New Jersey, Delaware, Pennsylvania, Maryland, District of Columbia, West Virginia, Ohio, Indiana, Lower Michigan and portions of Upper Michigan, Wisconsin, Illinois, Kentucky, Tennessee and Virginia as shown on the map below. In addition, transmission systems and generation within the metered boundaries of the LSEs are within **ReliabilityFirst** even if outside the respective service territories shown. The area is electrically contiguous.



Boundaries effective January 1, 2007

## Exhibit B – Governance

**Exhibit B shall set forth the Regional Entity’s bylaws and portions of the Standards Development Process as set out in Exhibit C, which NERC agrees demonstrate that the Regional Entity meets the following criteria:**

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

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

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

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

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



## **AMENDED AND RESTATED BYLAWS**

**OF**

### **Reliability*First* Corporation**

**a Delaware nonprofit corporation**

**Adopted December 19, 2006**

**Amended September 21, 2007<sup>1</sup>**

**Amended May 22, 2008<sup>2</sup>**

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<sup>1</sup> Section 5.9.2

<sup>2</sup> Sections 1.12, 7.13, 7.14

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**AMENDED AND RESTATED  
BYLAWS OF  
ReliabilityFirst Corporation  
a Delaware nonprofit corporation  
(the “Corporation”)**

[As adopted by the Members on December 19, 2006,  
amended by the Board of Directors on September 21, 2007,  
and amended by the Board of Directors on May 22, 2008]

**ARTICLE I.  
DEFINITIONS**

Section 1.1. Act. “Act” shall mean Section 215 of the Federal Power Act (16 U.S.C. §824n).

Section 1.2. Adjunct Member. “Adjunct Member” shall mean any entity that does not qualify to join an Industry Sector but has been approved for membership by the Board. Adjunct Members may include Regulatory Participants.

Section 1.3. Affiliate. “Affiliate” shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity, as determined in the sole discretion of the Board of the Corporation. For this purpose, “control” may be presumed by the direct or indirect ownership of ten percent (10%) or more of the outstanding voting capital stock or other equity interests having ordinary voting power.

Section 1.4. Associate Member. “Associate Member” shall mean any entity that has joined an Industry Sector and is an Affiliate or Related Party of a Regular Member.

Section 1.5. Board. “Board” shall mean the Board of Directors of the Corporation.

Section 1.6. Bulk Power System. “Bulk Power System” shall mean facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and electric energy from generation facilities needed to maintain transmission system reliability, but does not include facilities used in the local distribution of electricity.

Section 1.7. Certificate of Incorporation. “Certificate of Incorporation” shall mean the Certificate of Incorporation of the Corporation filed with the Delaware Secretary of State, as from time to time amended.

Section 1.8. Commission. “Commission” shall mean the Federal Energy Regulatory Commission.

Section 1.9. Delegation Agreement. “Delegation Agreement” shall mean the delegation agreement, as supplemented or amended from time to time, between NERC



and the Corporation pursuant to which NERC has delegated its authority to the Corporation to propose and enforce Reliability Standards within the Region.

Section 1.10. Electronic Transmission. “Electronic transmission” shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 1.11. ERO. “ERO” shall mean the electric reliability organization established under the Act to enforce Reliability Standards applicable to all owners, operators and users of the Bulk Power System in North America.

Section 1.12. Hearing Body. “Hearing Body” shall mean a group established with authority to conduct and render decisions in a formal compliance hearing of an entity registered in the NERC compliance registry who is the subject of a notice of alleged violation, proposed penalty or sanction, contested mitigation plan or contested remedial action directive.

Section 1.13. Industry Sector. “Industry Sector” shall mean a group of Bulk Power System owners, operators or users in the Region with substantially similar interests as pertinent to the purposes and operations of the Corporation of the Bulk Power System. The Industry Sectors shall consist of the following: (1) Suppliers, (2) Transmission Companies, (3) RTOs, (4) Small LSEs, (5) Medium LSEs, and (6) Large LSEs.

Section 1.14. Large LSEs. “Large LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 50,000 GWh or greater.

Section 1.15. Medium LSEs. “Medium LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region between 10,000 GWh and 50,000 GWh.

Section 1.16. Members. “Members” shall mean Regular Members, Associate Members and Adjunct Members.

Section 1.17. NERC. “NERC” shall mean the North American Electric Reliability Corporation, or any successor entity, which has been certified by the Commission as the ERO pursuant to the Act to establish and enforce Reliability Standards for the Bulk Power System.

Section 1.18. NERC Rules. “NERC Rules” shall mean the NERC Rules of Procedure as approved by the Commission.

Section 1.19. Net Energy for Load. “Net Energy for Load” shall mean net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses, but excludes energy required for storage of energy at energy storage facilities. Calculations of net energy for load for

all purposes under these Bylaws shall be based on the most recent calendar year for which data on net energy for load of the Region is available.

Section 1.20. Person. “Person” shall mean a natural person, corporation, cooperative, partnership, association, or other private or public entity.

Section 1.21. Region. “Region” shall mean the geographic boundaries of the Corporation described in the Delegation Agreement.

Section 1.22. Regional Entity. “Regional Entity” shall mean any entity with which NERC has entered into a delegation agreement to delegate, or which the Commission or a governmental authority in Canada or Mexico has directly assigned, enforcement authority for reliability standards for the Bulk Power System in a defined geographic area of North America.

Section 1.23. Regional Variance. “Regional Variance” shall mean an aspect of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities. A Regional Variance may be used to qualify how a particular Regional Entity or Regional Entities achieves the objectives of a Reliability Standard or may establish different measures or performance criteria as necessary to achieve reliability within the particular Regional Entity or group of Regional Entities. A Regional Variance may not be inconsistent with any Reliability Standard as it would otherwise exist without the Regional Variance. Such a Regional Variance may be proposed by a Regional Entity and, if adopted by NERC and approved by the Commission, shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authority.

Section 1.24. Regional Reliability Standard. “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

Section 1.25. Regular Member. “Regular Member” shall mean any entity that has joined an Industry Sector that either (i) has no Affiliates or Related Parties that are Members or (ii) is the entity designated to be the Regular Member by any related group of Associate Members.

Section 1.26. Regulatory Participant. “Regulatory Participant” shall mean any state, District of Columbia or any provincial regulatory agency in the Region exercising authority over the rates, terms or conditions of electric service of an entity other than itself within the Region, or the planning, siting, construction or operation of electric facilities of an entity other than itself within the Region, as well as the Commission, regional advisory bodies that may be established by the Commission, or any federal regulator or agency or any entity authorized by any state, the District of Columbia or any province to represent utility consumers.

Section 1.27. Related Party. “Related Party” shall mean, solely for purposes of the governance provisions of these Bylaws, any entity that is either (i) a generation and transmission cooperative or one of its distribution cooperative members; and (ii) a joint municipal agency or one of its members. For purposes of these Bylaws, a representative of a state or federal government agency shall not be deemed a Related Party with respect to each other, and a public body’s regulatory authority, if any, over a Member shall not be deemed to make it a Related Party with respect to that Member.

Section 1.28. Reliability Coordinator. “Reliability Coordinator” shall mean any entity that is recognized as a reliability coordinator by NERC in the Region that does not otherwise qualify as a Transmission Company or RTO.

Section 1.29. Reliability Standard. “Reliability Standard” shall mean a requirement to provide for Reliable Operation of the Bulk Power System, including, without limitation, the foregoing requirements for the operation of existing Bulk Power System facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the Bulk Power System, but shall not include any requirement to enlarge Bulk Power System facilities or to construct new transmission capacity or generation capacity.

Section 1.30. Reliable Operation. “Reliable Operation” shall mean operating the elements of the Bulk Power System within equipment and electric system thermal, voltage and stability limits so that instability, uncontrolled separation, or cascading failure of the Bulk Power System will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

Section 1.31. RTOs. “RTOs” shall mean PJM Interconnection L.L.C. and Midwest Independent Transmission System Operator, Inc., or such other entity that has been recognized by the Commission as a regional transmission operator or recognized functional equivalent in the Region.

Section 1.32. Small LSEs. “Small LSEs” shall mean (i) owners or operators of entities (or their representatives) that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 10,000 GWh or less, and (ii) end-use customers interconnected with the Bulk Power System with load of at least 100 MW at one location in the Region.

Section 1.33. Suppliers. “Suppliers” means owners or operators of electric generation connected to the transmission system and wholesale power marketers in the Region.

Section 1.34. Transmission Companies. “Transmission companies” means (i) owners (or those with ownership entitlement), planners and operators of transmission facilities included in the Bulk Power System in the Region and (ii) Reliability Coordinators.

ARTICLE II.  
PURPOSE AND ACTIVITIES

Section 2.1. Purpose. The business or purposes to be conducted or promoted by the Corporation are:

- (a) to be a Regional Entity and exercise enforcement authority for Reliability Standards for the Bulk Power System in the Region pursuant to the Delegation Agreement;
- (b) to carry out certain of NERC's activities that are in furtherance of NERC's responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules or the Delegation Agreement; and
- (c) to engage in any other lawful act or activity for which not for profit corporations may be organized under the Delaware General Corporation Law.

The Corporation shall be exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code") as an organization described in Section 501(c)(6) of the Code. The Corporation shall not engage directly or indirectly in any activity which would invalidate its status as an organization exempt from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(6) of the Code. No part of the net income to the Corporation shall inure to the benefit of or be distributed to its directors, officers, members or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered.

Section 2.2. Activities. In support and furtherance of its purpose, and in accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation's responsibilities shall include, but not be limited to, the following:

- (a) Reliability Standards. The Corporation shall:
  - (1) propose Reliability Standards, Regional Variances or modifications thereof to NERC; and
  - (2) develop Regional Reliability Standards through the Corporation's standards development procedure.
- (b) Enforcement. The Corporation shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the Region through the Corporation's compliance enforcement program.
- (c) Delegation-Related Services. The Corporation, on behalf of NERC, shall carry out certain of NERC's activities that are in furtherance of NERC's responsibilities as the ERO under the Act or in support of delegated functions, including:

- (1) Organization registration and certification.
- (2) Reliability readiness audit and improvement.
- (3) Reliability assessment and performance analysis.
- (4) Training and education.
- (5) Situational awareness and infrastructure security.

(d) Budget. The Corporation shall prepare and submit a budget to NERC for the amount of costs the Corporation will incur in support of delegated functions that are in furtherance of NERC's responsibilities as the ERO under the Act.

(e) Non-delegated Functions. The Corporation may conduct such other activities for or on behalf of the Members that are not delegated to the Corporation by NERC under the Delegation Agreement if authorized by the Board and not inconsistent with the Act, NERC Rules, the Delegation Agreement or these Bylaws.

Section 2.3. Not-for-Profit Corporation. The Corporation is operated as a Delaware non-stock nonprofit corporation and is organized pursuant to the general corporation law of the State of Delaware.

### ARTICLE III. POWERS

Section 3.1. Powers. The Corporation shall have the power to engage in any lawful act or activity for which corporations may be organized under the general corporation law of the State of Delaware, subject to any limitations provided in applicable federal, provincial or state law or in the Certificate of Incorporation or these Bylaws.

### ARTICLE IV. OFFICES

Section 4.1. Principal Office. The principal office of the Corporation shall be located initially within the Region, at such location as the Board may from time to time determine, giving consideration to the total cost to the Corporation and convenience of travel for staff, Members and Regulatory Participants. Once established, the principal office may remain in its location, even if outside the Region.

### ARTICLE V. MEMBERS

Section 5.1. General. The terms and conditions of membership in the Corporation shall be as provided in the Certificate of Incorporation and these Bylaws if

not inconsistent therewith. All Regular Members and Associate Members shall be required to join a single Industry Sector.

Section 5.2. Classes of Members. The Corporation shall have three (3) classes of Members: Regular Members, Associate Members and Adjunct Members.

5.2.1 Regular Members. Except as set forth in Section 7.4 of these Bylaws, Regular Members shall have the right to vote on all matters within their Industry Sector. Regular Members shall have all the rights and obligations of being a Member in the Corporation.

5.2.2 Associate Members. Associate Members shall not be entitled to vote within their Industry Sector or for any other purpose as a Member. Associate Members shall otherwise have all the rights and obligations of being a Member in the Corporation.

5.2.3 Adjunct Members. Adjunct Members shall not be entitled to vote for any purpose as a Member. Adjunct Members shall otherwise have all the rights of being a Member in the Corporation.

Section 5.3. Qualifications of Members. Any entity eligible to join an Industry Sector may be a Regular Member or Associate Member of the Corporation. Any entity not eligible to join an Industry Sector may be an Adjunct Member of the Corporation.

Section 5.4. Admission of Members. New Members may join the Corporation upon submittal of an application, in a form approved by the Board, and upon payment of such fees or charges, if any, as may be established by the Board or required by NERC. Each Regular Member and Associate Member shall designate the Industry Sector it wishes to join. A Regular Member and Associate Member may change its Industry Sector designation once each calendar year upon notice to the Corporation. Such notice must be provided to the Secretary of the Corporation at least sixty (60) days before an annual or other meeting of Members if the change is to be effective for such meeting. The President shall review a membership application and may request demonstration by the applicant that it qualifies for membership in a particular Industry Sector. Any dispute with respect to a Regular Member's or Associate Member's qualifications for a particular Industry Sector shall be resolved by the Board. The President shall have authority to approve an application for membership, subject to review by the Board.

Section 5.5. Voting Rights. Each Regular Member in good standing shall be entitled to one vote in the Industry Sector in which it belongs on all matters submitted to a vote of Members. The Board may suspend voting rights for a Regular Member delinquent by more than 60 days in payment of any penalties or because of the Regular Member's failure to meet other obligations to the Corporation. Except with respect to the election of Industry Sector directors as described elsewhere in the Certificate of Incorporation and these Bylaws, matters properly brought before the Members at an annual or special meeting shall be acted upon by the Industry Sectors voting together as a single class. The vote of each Industry Sector shall be split into an affirmative component based on votes for the matter(s) presented, and a negative component based on votes against the matter(s) presented, in direct proportion to the votes cast

within the Industry Sector for and against the matter presented, rounded to two decimal places. If authorized in advance by the Board, voting may be held electronically under such terms and conditions as are approved by the Board.

Section 5.6. Transfer of Membership. A Member of the Corporation may not transfer its membership or a right arising from it except to any Person succeeding to all or substantially all of the assets of the Member. If challenged, the President shall have authority to approve any such transfer, subject to review by the Board.

Section 5.7. Obligations of Members. By applying for and becoming a Regular or Associate Member of the Corporation, each Member agrees to comply with all Reliability Standards, all NERC standards and requirements, and the other obligations of Members of the Corporation set forth in these Bylaws or duly adopted by the Board in order to achieve the purposes of the Corporation. A Regular or Associate Member also agrees to obligate all of its Affiliates that have an impact on reliability in the Region to comply with all Reliability Standards and NERC standards and requirements. These obligations include but are not limited to: (a) obligations to provide data and information needed to perform the functions of the Corporation, (b) payment of any authorized penalties resulting from non-compliance with Reliability Standards, (c) in the case of Regular Members, electing the Board, and (d) providing qualified candidates to serve on organizational working groups. Adjunct Members agree to provide data and information needed to perform the functions of the Corporation.

Section 5.8. Withdrawal. A Member may withdraw from participation in the Corporation by providing written notice to the Corporation of such withdrawal. Such notice shall specify a date, not earlier than thirty (30) days from the date of notice, on which the withdrawal shall become effective; provided, however, that any such withdrawing Member shall remain liable to the Corporation for any dues or penalties or other obligations to the Corporation pursuant to Section 5.9 of these Bylaws.

Section 5.9. Funding and Dues.

5.9.1 NERC Funding. In accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation shall equitably allocate its dues, fees and other charges for the delegated functions conducted by the Corporation among all end users. The Corporation shall submit to NERC annually a list of all load-serving entities within the Region. NERC will bill all load-serving entities in the Region for the Corporation's costs for the delegated functions based on Net Energy for Load and be responsible for collection.

5.9.2 Application Fee, User-Fees and Other Charges. The Corporation may charge a nominal fee, which shall be determined by the President, for the submission of applications for membership. The Board of Directors may from time to time fix the amount of user-fees or other charges, if any, for activities that are not delegated to the Corporation by NERC under the Delegation Agreement and determine the methods of collection from entities that choose to participate in such activities.

Section 5.10. Penalties. If the Corporation initiates an investigation that leads to the imposition of a penalty, the Corporation shall receive any penalty monies that

results from the investigation. All monies which the Corporation collects from the issuance of penalties shall be applied as a general offset to the Corporation's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the Corporation.

## ARTICLE VI. MEETING OF MEMBERS

Section 6.1. Annual Meeting of Members. The Members shall hold an annual meeting in December of each year, or at such other time specified by the Board. At the annual meeting of Members: (i) each Industry Sector shall elect the successor(s), if any, for any director(s) from their Industry Sector whose term will expire before the next annual meeting of the Members, provided however, that any Industry Sector may elect a successor director representing such Industry Sector prior to such annual meeting, in accordance with the provisions of this Article VI, in which case the election of such succeeding director(s) shall be reported to the Corporation at such annual meeting; (ii) the President and Treasurer shall report on the activities and financial condition of the Corporation; (iii) the Industry Sectors shall elect a slate of at-large and independent directors to fill vacancies or expiring terms; and (iv) the Industry Sectors shall consider and act upon such other matters as are consistent with the notice of the annual meeting. The failure to hold an annual meeting in accordance with these Bylaws shall not affect the validity of a corporate action.

Section 6.2. Special Meetings of Members. Special meetings of the Members may be called by six (6) directors on the Board, by the President, or by Members if at least ten percent (10%) of the Regular Members sign, date, and deliver to the President one or more written demands for a special meeting describing the purpose for which it is to be held. Within fifteen (15) days after receipt of a demand for a special meeting from Regular Members, the President shall cause a special meeting to be called and held on notice in accordance with Section 6.4 of these Bylaws. If the President fails to cause a special meeting to be called and held as required by this Section 6.2, a Regular Member making the demand may call the meeting by giving notice under Section 6.4. In either event, notice of the meeting and the costs of the meeting shall be at the expense of the Corporation. The business transacted at a special meeting is limited to the purposes stated within the notice of the meeting. Business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the Corporation, unless ninety percent (90%) of the Regular Members entitled to vote were present at such meeting or have waived notice of the meeting under Section 6.4.

Section 6.3. Location of Meetings of Members. Meetings of Members shall be held at a location designated by the President or the Board. If a Regular Member calls a meeting pursuant to Section 6.2, the Regular Members making the demand for the meeting may designate the location, provided the meeting must be held within the Region and in a facility of appropriate size to accommodate the Members.

Section 6.4. Notice of Meetings.

6.4.1 Notice Requirements. Notice of meetings of Members must be given at least five (5) days before the date of a meeting and not more than sixty (60) days before



the date of a meeting. The notice must contain the date, time and place of the meeting, instructions for electronic attendance or voting, if applicable, and an agenda of the matters upon which action may be taken at the meeting. A matter may be added to the agenda of a meeting at the meeting upon the affirmative vote of three-quarters (3/4) of the Industry Sector votes cast on a motion to amend the agenda. If the meeting is an adjourned meeting and the date, time and place of the meeting were announced at the time of the adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed. Notice shall be deemed given by the Corporation to the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each Member's representative authorized pursuant to section 6.10.1

6.4.2 Waiver of Notice; Objections. A Member may waive notice of a meeting of Members. A waiver of notice by a Member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a Member at a meeting is a waiver of notice of that meeting, unless the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 6.5. Record Date. The Board may fix a date not more than sixty (60) days before the date of a meeting of Members as the date for the determination of the Members entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only Members on that date are entitled to notice and to vote at the meeting unless the Board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than sixty (60) days after the record date for determining Members entitled to notice of the original meeting.

Section 6.6. Right to Vote; Act of Members.

6.6.1 Industry Sector Voting. Voting of the Members shall be by Industry Sector, with each Industry Sector entitled to cast one vote. Each Member entitled to vote in an Industry Sector shall be entitled to cast one vote in its Industry Sector. The vote of each Industry Sector shall be split into an affirmative component based on votes for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast within the Industry Sector for and against the pending motion, rounded to two decimal places. To the extent practicable, all Member votes may be held electronically under such terms and conditions as are approved by the Board.

6.6.2 Act of Members. If a quorum is present, except with respect to any matter described in Section 6.5.3, a majority of the Industry Sector votes cast on the matter shall be the act of the Members.

6.6.3 Special Voting Requirements. Notwithstanding any other provision of these Bylaws, and except as set forth in the Certificate of Incorporation and Section

13.2 of these Bylaws, two-thirds (2/3) of the Industry Sector votes cast shall be required to:

(a) Amend the Bylaws, except as otherwise provided in Section 17.1 of these Bylaws. The substance of the proposed amendment must be contained in the notice of the meeting at which the vote will be taken; however, the Members may modify a proposed Bylaw amendment at the meeting.

(b) Approve any proposal to terminate the Corporation.

Section 6.7. Quorum. A quorum for a meeting of Members is a majority of the Regular Members entitled to vote in each Industry Sector at the meeting. A quorum for a meeting of an Industry Sector is a majority of the Regular Members of that Industry Sector entitled to vote at the meeting. In both cases, electronic participation is acceptable if authorized by the Board. A quorum is necessary for the transaction of business at a meeting of Members or of any Industry Sector. If a quorum is not present, a meeting may be adjourned for that reason by the Industry Sectors or Regular Members then represented or present.

Section 6.8. Action by Written Ballot. An action that may be taken at a regular or special meeting of Members may be taken without a meeting if the Corporation mails or delivers a written ballot to every Regular Member entitled to vote on the matter. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Solicitations for votes by written ballot must: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve the matter; (iii) specify the time by which a ballot must be received by the Corporation in order to be counted; and (iv) may not be revoked once received.

Section 6.9. Action by Electronic Communication. Any vote of an Industry Sector to elect a director or for any other purpose may be taken by electronic means without a meeting or during a meeting. In addition, a conference among Members by a means of communication through which the participants may simultaneously hear each other during the conference is a meeting of the Members, if the same notice is given of the conference as would be required for a meeting and if the number of persons participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting. A Member may participate in a meeting of the Members by a means of communication through which the Member, other persons participating, and all persons physically present at the meeting may simultaneously communicate with each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.

Section 6.10. Member Representatives; Proxies.

6.10.1 Designation of Representative. Each year prior to the annual meeting of Members, each Regular Member shall designate the individual authorized to vote on

Corporation matters on behalf of the Member, in accordance with procedures approved by the Board. A Regular Member may change such designation at any time by providing at least twenty-four (24) hour written notice to the Secretary of the Corporation. Such notice may be provided by electronic transmission.

6.10.2 Authorization. The individual designated to vote by a Regular Member may appoint a proxy to vote or otherwise act for the Regular Member at any meeting or by electronic transmission by signing an appointment form either personally or by an attorney so designated by the Regular Member.

6.10.3 Effective Period. An appointment of a proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes. An appointment is valid for the next regular or specially scheduled meeting or ballot by electronic transmission. However, a proxy is not valid for more than sixty (60) days from its date of execution.

6.10.4 Revocation. An appointment of a proxy is revocable by a Regular Member. Appointment of a proxy is revoked by the person appointing the proxy either by open declaration at a meeting or by signing and delivering a written revocation to the Secretary or other officer or agent authorized to tabulate proxy votes. This may be done either in a written statement that the appointment of the proxy is revoked or by a subsequent appointment that shall serve to cancel all prior proxies.

Section 6.11. Public Notice of Member Meetings. Notice to the public of the dates, times and places of meetings of the Members, and all nonconfidential material provided to the Members, shall be posted on the Corporation's website at approximately the same time that notice is given to the Members. Meetings of the Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

Section 6.12. Posting of Minutes. Minutes of meetings of Members shall be posted on the Corporation's website when available.

Section 6.13. Reimbursement of Member Expenses. The Corporation will be under no obligation to reimburse Members for expenses associated with their attendance at regular or special Member meetings.

## ARTICLE VII. BOARD OF DIRECTORS

Section 7.1. General. The composition of the Board and the terms of office of the directors, the manner of their nomination, election or appointment, and other terms and conditions of their service, shall be as provided in the Certificate of Incorporation and these Bylaws if not inconsistent therewith.

Section 7.2. Management of Corporation. The business of the Corporation shall be managed under the direction of the Board. Specific functions of the Board shall include, but not be limited to:

- (a) govern the Corporation and oversee all of its activities;
- (b) establish and oversee all organizational groups;
- (c) approve, revise and enforce Reliability Standards utilizing a fair, open, balanced and inclusive process;
- (d) establish compliance monitoring procedures and requirements, and penalties and sanctions for non-compliance consistent with applicable NERC Rules;
- (e) impose penalties and sanctions consistent with the NERC Rules and the procedures approved by the Board;
- (f) establish and approve an annual budget for submission to NERC;
- (g) hire the Corporation's president and approve his or her salary;
- (h) annually at the first regular Board meeting following the annual meeting of Members, elect a Chair ("Chair") and a vice-chair from among the directors on the Board; and
- (i) establish Board committees as appropriate.

Section 7.3. Voting. Each director shall have one vote with respect to decisions of the Board.

Section 7.4. Composition of the Board. Effective as of the date of the first annual meeting of Members:

- (a) The Board shall consist of fourteen (14) directors.
- (b) Eight directors shall be elected by the Industry Sectors as follows:
  - (i) Suppliers shall elect two (2) directors;
  - (ii) Transmission Companies shall elect two (2) directors;
  - (iii) RTOs shall select one (1) director;
  - (iv) Small LSEs shall elect one (1) director;
  - (v) Medium LSEs shall elect one (1) director; and
  - (vi) Large LSEs shall elect one (1) director.

(c) Three (3) directors shall be at-large. At-large directors shall be elected by all of the Industry Sectors voting together as a single class.

(d) Three (3) directors shall be independent from the Corporation and any Member or any Affiliate or Related Party of any Member. Independent directors shall be elected by all of the Industry Sectors voting together as a single class.

(e) Industry Sectors shall elect their respective sector and at-large directors from among individuals holding senior management positions in Member organizations. Any sector-elected or at-large director whose Member organization changes Industry Sectors or who ceases to hold a senior management position in a Member organization shall continue to serve out his or her remaining term, unless such director resigns or is removed. When selecting at-large directors, Industry Sectors shall consider such factors as the geographic and functional representation of the Board. No two directors may be employees of a single Member or any Affiliate or Related Party of a Member or any Affiliate.

(f) An independent director is a person (i) who is not an officer or employee of the Corporation, an officer, director, or employee of a Member, or an officer, director or employee of any entity that would reasonably be perceived as having a direct financial interest in the outcome the Board's decisions, or (ii) who does not have a relationship that would interfere with the exercise of independent judgment in carry out the responsibilities of a director. The Board may adopt additional standards for director independence not inconsistent herewith.

(g) At-large and independent directors shall be nominated by the nominating and governance committee of the Board. The nominating and governance committee shall seek out for nomination independent directors from diverse backgrounds, who will contribute to the effective functioning of the Board and the Corporation by bringing a broad range of industry expertise, viewpoints, experiences, skill sets and knowledge. The nominating and governance committee will establish procedures to ensure that diverse candidates are in the pool of applicants for every independent director position and will retain an independent consultant to prepare a list of individuals qualified and willing to serve as independent directors.

(h) Any director which the full Board has determined has a conflict of interest on any compliance or enforcement matter brought before the Board shall not vote on such matter and shall recuse himself or herself from all Board deliberations concerning such matter.

(i) There will be no alternates or proxies for directors.

Section 7.5. Terms of Directors. The directors will be divided into three classes. The term of office of the first class will expire at the second annual meeting of Members; the term of office of the second class will expire one year thereafter; and the term of office of the third class two years thereafter. At each annual meeting of Members, directors shall be chosen for a three year term to succeed those whose term

expires. The directors for each class will be selected by lot at the first annual meeting of directors, provided that no two at-large directors, no two independent directors and no two directors of the same Industry Sector shall be in the same class. Each director shall hold office until (a) the expiration of the term for which he or she was elected and until his or her successor is elected and qualified, or (b) his or her earlier death, resignation or removal. Any director may be removed at any time by the affirmative vote of two-thirds of the Industry Sector or Industry Sectors, as applicable, electing such director. A director may be removed by the Board for non-attendance at three consecutive Board meetings.

Section 7.6. Reimbursement. Independent directors shall have the right to reimbursement by the Corporation of their actual reasonable travel expenses to Board meetings or when specifically selected to represent the Corporation at a business meeting. The directors elected by the Industry Sectors and the at-large directors shall not be reimbursed by the Corporation for any expenses, unless specifically approved in advance by resolution of the Board.

Section 7.7. Resignations; Vacancies.

(a) Resignations. A director may resign at any time from the Board by submitting a written resignation to the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation.

(b) Vacancies. If an Industry Sector or at-large director resigns, dies or otherwise becomes incapacitated or is removed during the term of office for which elected, the directorship shall thereupon be vacant and shall be filled by the Industry Sector or Industry Sectors, as applicable, by written or electronic ballot in accordance with the procedures and requirements set forth above. The successor director elected by the Industry Sector shall hold office for the unexpired term of the vacated directorship replaced. If an independent director ceases to be independent, as determined by the Board, his or her directorship shall thereupon be vacant and may be filled by the Board until the next annual meeting of Members, at which time a permanent successor shall be elected by the Industry Sectors for the remainder of the unexpired term.

Section 7.8. Meetings; Notice; Waiver.

(a) Meetings. An annual meeting of the Board shall be held without notice immediately following the annual meeting of the Members. The Board shall elect the Chair and Vice-Chair for the next year at the annual meeting. In addition, regular meetings may be held at such time or times as fixed by the Board. Special meetings of the Board may be called by the Board's Chair, the President or by any three directors and shall be held at the principal office of the Corporation, or such other place within the Region as determined by the Chair or the President after consultation with the Board.

(b) Notice. Notice of the dates, times, and places of all regular and special meetings of the Board shall be published by the Secretary and provided to all directors and Members not less than three (3) days prior to the date of the

meeting. Notice shall be deemed given by the Corporation to directors and the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each director and each Member's representative authorized pursuant to section 6.10.1.

(c) Waiver. Any person entitled to notice of a regular or special meeting of the Board may waive notice thereof. A waiver of notice by a person entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting of the Board is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 7.9. Quorum. For the Board to take action at a meeting, a quorum of directors must be present. A quorum is a majority of the directors then in office, provided that: (a) if there are three independent directors holding office, two independent directors must be present to constitute a quorum, or (b) if there are two independent directors holding office, one independent director must be present to constitute a quorum. If there is only one independent director or no independent directors holding office, there is no requirement that an independent director be present in order for the Board to have a quorum. In the absence of a quorum, a majority of the directors present may adjourn a meeting, without notice, except as may be given at such meeting, until a quorum is present.

Section 7.10. Board Action. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law or these Bylaws.

Section 7.11. Action Without a Meeting. Any action required or permitted to be taken at a Board meeting or any committee thereof may be taken by written action, signed by all of the directors of the Board or members of the committee, as the case may be. The written action is effective when signed by the directors unless a different effective time is provided in the written action. Any nonconfidential material provided to the Board or a committee in connection with such written action shall be posted on the Corporation's website at approximately the same time that it is given to the Board or the committee. Written actions shall be filed with the minutes of the Corporation and the results of such written action shall be promptly posted on the Corporation's website.

Section 7.12. Action by Electronic Communication. A conference among directors by a means of communication through which the directors may simultaneously hear each other during the conference is a Board meeting if the same notice is given of the conference as would be required for a meeting and if the number of directors participating in the conference is a quorum. Participation in a meeting by this means constitutes personal presence at the meeting. A director may participate in a Board meeting by any means of communication through which the director, other directors

participating, and all directors physically present at the meeting may simultaneously communicate with each other during the meeting.

Section 7.13. Board Committees. The Board shall have an audit committee, compensation committee, nominating and governance committee and compliance committee, and such other committees the Board deems necessary and appropriate. Each committee shall be comprised of not less than three directors. The compliance committee shall be comprised of five directors, a majority of whom are independent directors. The Board may require that a minimum number of independent directors serve on each of these committees. The Board shall have the power to appoint, and to delegate authority to, such committees of the Board as it determines to be appropriate from time to time. The Board may require any committee to adopt a charter, subject to approval by the Board, governing the activities and authority of the committee and the composition of its members.

Section 7.14. Hearing Body. The Hearing Body shall consist of the Board compliance committee.

7.14.1 Quorum. For the Hearing Body to take action at a hearing, a quorum of members must be present. A quorum is a majority of members of the Hearing Body, provided that at least two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum, provided that the requirement that at least two independent directors are present for a quorum shall at all times continue to be met. Such new member shall serve on the Hearing Body for purposes of the subject hearing through the conclusion of the hearing but not thereafter.

7.14.2 Voting. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present.

Section 7.15. Public Notice of Board Meetings. Notice to the public of the dates, times and places of Board meetings, including committees thereof, and all nonconfidential material provided to the Board or the committees, shall be posted on the Corporation's website, and notice of Board and committee meetings shall be sent by electronic transmission to Members, at approximately the same time that notice is given to the Board or the committee, as the case may be. Board and committee Meetings shall be open to all Members and the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that any meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

Section 7.16. Posting of Minutes. Minutes of Board and committee meetings shall be posted on the Corporation's website when available.

Section 7.17. Compensation of Directors. The directors elected by the Industry Sectors and the at-large directors shall not receive compensation for their service to the



Corporation as directors on the Board. The independent directors shall be entitled to such compensation as the Board may from time to time determine. Nothing contained in these Bylaws shall preclude any director from receiving compensation for services to the Corporation in any other capacity.

## ARTICLE VIII. ORGANIZATIONAL GROUPS

Section 8.1. Establishment of Organizational Groups. The Board shall establish such organizational groups, consisting of committees, sub-committees, task forces and working groups of Members, as are necessary and appropriate to accomplish the purposes of the Corporation in an efficient and cost-effective manner. All organizational groups shall be subject to the direction and control of the Board. The membership of organizational groups shall be determined based upon experience, expertise and geographic diversity and to the extent practicable shall include balanced representation of the Industry Sectors. The Board shall establish policies and procedures governing the creation of organizational groups, how they are populated, how voting and related matters are conducted, how they may be reorganized and the direction and termination of such groups. The Board shall conduct a review of all organizational groups of the Corporation on an annual basis to ensure that the business of the Corporation is conducted in an efficient, cost-effective manner.

Section 8.2. Reimbursement. The Board may authorize reimbursement for persons acting on behalf of the Corporation, as necessary in the interests of the Corporation.

## ARTICLE IX. OFFICERS

Section 9.1. Officers. The officers of the Corporation shall include a President, one or more Vice Presidents, a Secretary, a Treasurer and any other officers as may be elected or appointed in accordance with the provisions of this Article. The Board may elect or appoint any additional officers that it deems desirable, such other officers to have the authority and perform the duties prescribed by the Board. The same individual may hold any number of offices, except that of President.

Section 9.2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board. Each officer shall hold office at the pleasure of the Board. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. New officers may be created and the positions filled at any meeting of the Board. Each elected officer shall hold office until his or her successor has been duly elected and qualified or upon his or her earlier resignation or removal.

Section 9.3. Removal. Any officer elected by the Board may be removed by the affirmative vote of two-thirds (2/3) of the Board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 9.4. Vacancies. A vacancy in any office because of death, incapacity, resignation, removal, disqualification, or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 9.5. President. The President shall:

- (a) be the principal executive and operating officer of the Corporation;
- (b) sign certificates of membership, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation; and
- (c) perform all duties incident to the office of President, including hiring and directing staff, and such other duties as may be prescribed by the Board from time to time.

Section 9.6. Vice Presidents. The Vice President(s) shall perform such duties and have such powers as the Board or President may from time to time prescribe. At the request of the Board, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 9.7. Secretary. The Secretary shall ensure that the following duties are carried out:

- (a) the minutes of the meetings of the Members and of the Board, and each committee thereof, are recorded;
- (b) all required notices are duly given in accordance with these Bylaws and as required by law;
- (c) a register of the current names and addresses of all Members is maintained and posted on the Corporation's website;
- (d) a complete copy of the Certificate of Incorporation and Bylaws of the Corporation containing all amendments thereto are kept on file at all times and posted on the Corporation's website, which copies shall always be open to the inspection of any Member; and
- (e) generally perform all duties incident to the office of Secretary and such other duties as may be prescribed by the Board from time to time.

Section 9.8. Treasurer. The Treasurer shall be responsible for the following activities:

- (a) maintain custody of all funds and securities of the Corporation;
- (b) receipt of and the issuance of receipts for all monies due and payable to the Corporation and for deposit of all such monies in the name of the Corporation in such bank or banks or financial institutions as shall be selected by the Board; and
- (c) generally perform all duties incident to the office of Treasurer and such other duties as may be prescribed by the Board from time to time.

ARTICLE X.  
CERTIFICATES OF MEMBERSHIP

Section 10.1. Certificates of Membership. The Board may, but need not, provide for the issuance of certificates evidencing membership in the Corporation, which certificates shall be in such form as may be determined by the Board.

ARTICLE XI.  
BOOKS AND RECORDS

Section 11.1. Books and Records; Financial Statements. The Corporation shall keep at such office selected by the Board correct and complete copies of its Certificate of Incorporation and Bylaws, accounting records, and minutes of meetings of Members, Board, and committees having any of the authority of the Board. A Member, or the agent or attorney of a Member, may inspect all books and records for any proper purpose at any reasonable time. Upon request, the Corporation shall give the Member a statement showing the financial result of all operations and transactions affecting income and expenses during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.

ARTICLE XII.  
FISCAL YEAR

Section 12.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

ARTICLE XIII.  
TRANSFER OF ASSETS

Section 13.1. Member Approval Not Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation, by affirmative vote of the Board, may sell, lease, transfer, or dispose of its property and assets in the usual and regular course of its activities and grant a security interest in all or substantially all of its property and assets in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient, in which case no Member approval is required.

Section 13.2. Member Approval Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient only when approved at a regular or special meeting of the Members by the affirmative vote of two-thirds (2/3) of all the Members. Notice of the meeting must be given to the Members. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the Corporation.

#### ARTICLE XIV. CONTRACTS, CHECKS, DEPOSITS, AND GIFTS

Section 14.1. Contracts. The Board may authorize any officer or officers or agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or may be confined to specific instances.

Section 14.2. Checks, Drafts, or Orders. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, may be signed by such officer or officers or agent or agents of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board.

Section 14.3. Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 14.4. Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for any purpose of the Corporation.

#### ARTICLE XV. INSURANCE, LIMITATION ON LIABILITY AND INDEMNIFICATION

Section 15.1. Insurance. The President is authorized to procure insurance to protect the Corporation against damages arising out of or related to any directive, order, procedure, action or requirement of the Corporation.

Section 15.2. Limitations on Liability. As provided in Article Fourteenth of the Certificate of Incorporation, a director of the Corporation shall not be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability

of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of Article Fifteenth of these Bylaws by the Members of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

Section 15.3. Right to Indemnification.

15.3.1 Indemnified Persons. Each person who was or is made a party or is threatened to be made a party to or is involved in or called as a witness in any Proceeding because he or she is an Indemnified Person shall be indemnified and held harmless by the Corporation to the fullest extent permitted under the Delaware General Corporation Law (the "DGCL"), as the same now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment). Such indemnification shall cover all expenses incurred by an Indemnified Person (including, but not limited to, attorneys' fees and other expenses of litigation) and all liabilities and losses (including, but not limited to, judgments, fines, ERISA or other excise taxes or penalties and amounts paid or to be paid in settlement) incurred by such person in connection therewith.

15.3.2 Denial of Authorization for Certain Proceedings. Notwithstanding anything to the contrary in this Section 15.3, except with respect to indemnification of Indemnified Persons specified in paragraph 15.3.3 of this Section 15.3, the Corporation shall indemnify an Indemnified Person in connection with a Proceeding (or part thereof) initiated by such person only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of notice thereof from such Indemnified Person.

15.3.3 Certain Defined Terms. For purposes of this Section 15.3, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(1) a "Proceeding" is any investigation, action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom.

(2) an "Indemnified Person" is a person who is, was, or had agreed to become a Director of the Corporation (including, in the case of such person seeking indemnification while serving as a Director who is or was an officer of the Corporation, such person in his capacity as an officer.)

15.3.4 Expenses. Expenses, including attorneys' fees, incurred by a person indemnified pursuant to paragraph 15.3.1 in defending or otherwise being involved in a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding, including any appeal therefrom, upon receipt of an undertaking (the "Undertaking") by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation; provided that in connection with a Proceeding (or part thereof) initiated by such person,

except a Proceeding authorized by paragraph 15.3.5, the Corporation shall pay said expenses in advance of final disposition only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of a request for such advancement accompanied by the Undertaking. A person to whom expenses are advanced pursuant hereto shall not be obligated to repay such expenses until the final determination of any pending Proceeding in a court of competent jurisdiction concerning the right of such person to be indemnified or the obligation of such person to repay such expenses.

15.3.5 Protection of Rights. If a claim by an Indemnified Person under paragraph 15.3.1 is not promptly paid in full by the Corporation after a written claim has been received by the Corporation or if expenses pursuant to paragraph 15.3.4 have not been promptly advanced after a written request for such advancement by an Indemnified Person (accompanied by the Undertaking required by paragraph 15.3.4) has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or the advancement of expenses. If successful, in whole or in part, in such suit, such claimant shall also be entitled to be paid the reasonable expense thereof. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the Undertaking has been tendered to the Corporation that indemnification of the claimant is prohibited by law, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, independent legal counsel, or the Members) to have made a determination, if required, prior to the commencement of such action that indemnification of the claimant is proper in the circumstances, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the Members) that indemnification of the claimant is prohibited, shall be a defense to the action or create a presumption that indemnification of the claimant is prohibited.

15.3.6 Miscellaneous.

(a) Non-Exclusivity of Rights. The rights conferred on any person by this Section 15.3 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote of Members or disinterested directors or otherwise. The Board shall have the authority, by resolution, to provide for such other indemnification of directors, and such indemnification of officers, delegates, employees, agents, or others of the Corporation as it shall deem appropriate.

(b) Insurance, contracts, and funding. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, delegate or agent of the Corporation against any expenses, liabilities or losses, whether or not the Corporation would have the power to indemnify such person against such expenses, liabilities or losses under the DGCL. The Corporation may enter into contracts with any director, officer, or employee of the Corporation in furtherance of the provisions of this Section 15.3 and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter

of credit) to ensure the payment of such amounts as may be necessary to effect the advancing of expenses and indemnification as provided in such contracts or as otherwise provided in this Section 15.3.

(c) Contractual nature. The provisions of this Section 15.3 shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person. This Section 15.3 shall be deemed to be a contract between the Corporation and each person who, at any time that this Section 15.3 is in effect, serves or agrees to serve in any capacity which entitles him to indemnification and advancement of expenses hereunder and any repeal or other modification of this Section 15.3 or any repeal or modification of the DGCL or any other applicable law shall not limit any rights of indemnification for Proceedings then existing or arising out of events, acts or omissions occurring prior to such repeal or modification, including, without limitation, the right to indemnification and advancement of expenses for Proceedings commenced after such repeal or modification to enforce this Section 15.3 with regard to Proceedings arising out of acts, omissions or events arising prior to such repeal or modification.

(d) Cooperation. Each Indemnified Person shall cooperate with the person, persons or entity making the determination with respect to such Indemnified Person's entitlement to indemnification under this Section 15.3, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to such Indemnified Person and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by such Indemnified Person in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to such Indemnified Person's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold such Indemnified Person harmless therefrom.

(e) Subrogation. In the event of any payment under this Section 15.3 to an Indemnified Person, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of such Indemnified Person, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

(f) Severability. If this Section 15.3 or any portion hereof shall be invalidated or held to be unenforceable on any ground by any court of competent jurisdiction, the decision of which shall not have been reversed on appeal, this Section 15.3 shall be deemed to be modified to the minimum extent necessary to avoid a violation of law and, as so modified, this Section 15.3 and the remaining provisions hereof shall remain valid and enforceable in accordance with their terms to the fullest extent permitted by law.

ARTICLE XVI.  
TRANSITION

Section 16.1. Transition Standards. Standards. The Corporation will use the existing standards, criteria, rules or guides from each existing reliability council region for those Members that join the Corporation as in effect immediately prior to formation of the Corporation until such standards, criteria, rules or guides are adopted, superseded, or rejected by the Corporation. The Corporation will establish any necessary transition committees, subcommittees, working groups or task forces to administer the existing regional reliability standards, criteria, rules and guides until they are adopted, superseded, or rejected by the Corporation. The Corporation will employ its best efforts, within two (2) years of its formation, to work toward a uniform set of Reliability Standards for the entire Region. The Board will develop and implement a standards process and a plan for transition to new Reliability Standards. This process will include a requirement that two-thirds of the directors present at a meeting must vote to adopt new Reliability Standards.

ARTICLE XVII.  
PARTICIPATION BY REGULATORY PARTICIPANTS

Section 17.1. Regulatory Participants. All Regulatory Participants shall be entitled to and be provided with the same rights to notice of and participation in meetings or other activities of the Corporation as are provided to Members, but shall not have the right to vote.

ARTICLE XVIII.  
BUDGET AND BUSINESS PLAN

Section 18.1. Budget and Business Plan. Each annual budget and business plan of the Corporation shall be approved by the Board in sufficient time in each fiscal year to allow for timely submittal of the approved annual budget and business plan to NERC in accordance with the NERC Rules. The Corporation shall post a draft of each budget and business plan on the Corporation's website for purposes of review and comment by the Members at least ten (10) days prior to the Board meeting at which the budget and business plan are to be approved.

ARTICLE XIX.  
AMENDMENT OF BYLAWS

Section 19.1. Amendment Of Bylaws. The power to adopt, amend or repeal these Bylaws is vested in the Members as set forth in Section 6.6.3 of these Bylaws; provided, however, that upon the passage of any federal electric reliability legislation, and/or the adoption of any rules or regulations of the Commission, NERC or other governmental entity with jurisdiction, the Board shall have authority to amend these Bylaws as necessary and appropriate to comply with such law, legislation, rules and regulations.



## Exhibit C – Regional Standard Development Procedure

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

### **COMMON ATTRIBUTE 1**

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

### **COMMON ATTRIBUTE 2**

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

### **COMMON ATTRIBUTE 3**

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

### **COMMON ATTRIBUTE 4**

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

### **COMMON ATTRIBUTE 5**

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

### **COMMON ATTRIBUTE 6**

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

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

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

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

### **COMMON ATTRIBUTE 7**

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

### **COMMON ATTRIBUTE 8**

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

### **COMMON ATTRIBUTE 9**

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

### **COMMON ATTRIBUTE 10**

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

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

### **COMMON ATTRIBUTE 11**

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

### **COMMON ATTRIBUTE 12**

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

### **COMMON ATTRIBUTE 13**

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

### **COMMON ATTRIBUTE 14**

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

### **COMMON ATTRIBUTE 15**

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

### **COMMON ATTRIBUTE 16**

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

### **COMMON ATTRIBUTE 17**

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

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards] committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

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

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

### **COMMON ATTRIBUTE 18**

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

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

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

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

### **COMMON ATTRIBUTE 19**

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

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

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

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

### **COMMON ATTRIBUTE 20**

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

### **COMMON ATTRIBUTE 21**

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

### **COMMON ATTRIBUTE 22**

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

### **COMMON ATTRIBUTE 23**

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

#### **COMMON ATTRIBUTE 24**

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

#### **COMMON ATTRIBUTE 25**

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

#### **COMMON ATTRIBUTE 26**

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

#### **COMMON ATTRIBUTE 27**

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

#### **COMMON ATTRIBUTE 28**

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

#### **COMMON ATTRIBUTE 29**

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

#### **COMMON ATTRIBUTE 30**

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

**COMMON ATTRIBUTE 31**

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

**COMMON ATTRIBUTE 32**

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

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

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

Reliability*First* Reliability Standards Development Procedure

Board Approval December 6<sup>th</sup>, 2007

Standards Committee Modified April 1<sup>st</sup>, 2008 - Board Concurrence May 22<sup>nd</sup>, 2008

# Reliability *First* Corporation Reliability Standards Development Procedure

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# Reliability*First* Corporation Reliability Standards Development Procedure

## Introduction

This procedure establishes the process for adoption of a Regional Reliability Standard<sup>1</sup> (hereinafter referred to as “Standard”) of the Reliability*First* Corporation (Reliability*First*) and the development of consensus for adoption, approval, revision, reaffirmation, and deletion of such Standards<sup>1</sup>. Reliability*First* Standards provide for the reliable regional and sub-regional planning and operation of the Bulk Power System<sup>2</sup> (BPS), consistent with Good Utility Practice<sup>2</sup> within the Reliability*First* geographical footprint.

This procedure was developed under the direction of the Reliability*First* Board of Directors (Board), who may request changes to this Reliability*First* Reliability Standards Development Procedure (hereinafter referred to as “this Procedure”) as deemed appropriate. A procedure for revising this Procedure is contained in Appendix A. This Procedure is consistent with the North American Electric Reliability Council (NERC) Reliability Standards Development Procedure.

Proposed Standards shall be subject to approval by NERC, as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the FPA. No Standard shall be effective within the Reliability*First* area unless filed by NERC with FERC and approved by FERC.

Reliability*First* Standards shall provide for as much uniformity as possible with NERC reliability standards across the interconnected BPS. A Reliability*First* Standard shall be more stringent than a NERC reliability standard, including a regional difference that addresses matters that the NERC reliability standard does not, or shall be a regional difference necessitated by a physical difference in the BPS. A Reliability*First* Standard that satisfies the statutory and regulatory criteria for approval of proposed NERC reliability standards, and that is more stringent than a NERC reliability standard, would generally be acceptable.

Reliability*First* Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable BPS owners, operators, and users within the Reliability*First* area, regardless of membership in the region.

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<sup>1</sup> Legacy standards, such as ECAR Documents, MAIN Guides, and MAAC Procedures shall be considered Reliability*First* Regional Reliability Standards for the purposes of this document until otherwise acted upon by the Reliability*First* Board

<sup>2</sup> As defined in the Reliability*First* By-laws Board Approval December 6<sup>th</sup>, 2007

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## Background

Regions may develop, through their own processes, separate “Regional Standards” (Reliability*First* Standards) that go beyond, add detail to, or implement NERC reliability standards, or otherwise address issues that are not addressed in NERC reliability standards.

As a condition of Reliability*First* membership, all Reliability*First* Members<sup>2</sup> agree to adhere to the NERC reliability standards. As such, the Reliability*First* and its Members will adhere to the NERC reliability standards in addition to the Reliability*First* Standards. NERC reliability standards and the Reliability*First* Standards are both to be included within the Reliability*First* Compliance Program.

Reliability*First* Standards are intended to apply only to that part of the Eastern Interconnection within the Reliability*First* geographical footprint. The development of these Reliability*First* Standards is developed according to the following principles via the process contained within this Procedure:

- Developed in a fair and open process that provided an opportunity for all interested parties to participate;
- Does not have an adverse impact on commerce that is not necessary for reliability;
- Provides a level of BPS reliability that is adequate to protect public health, safety, welfare, and national security and would not have a significant adverse impact on reliability; and
- Based on a justifiable difference between Regions or between sub-Regions within the Regional geographic area.

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<sup>2</sup> As defined in the Reliability*First* By-laws  
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## **Regional Reliability Standard Definition, Characteristics, and Elements**

### ***Definition of a Reliability Standard***

As contained in the ReliabilityFirst By-laws, ReliabilityFirst “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

Inherent in this definition, a ReliabilityFirst Standard will define certain obligations or requirements of entities that own, operate, plan, and use the BPS within the ReliabilityFirst geographical footprint. These obligations or requirements as contained in the ReliabilityFirst Standards are to be measurable consistent with Good Utility Practice. Standards are not to include processes or procedures that implement a Standard. In addition, obligations, requirements or procedures imposed upon ReliabilityFirst by NERC reliability standards are not to be ReliabilityFirst Standards, unless those obligations, requirements or procedures require the establishment of a “policy or standard” as defined by the ReliabilityFirst By-laws.

### ***Characteristics of a Regional Reliability Standard***

A Standard is policy or standard, including adequacy criteria to provide for the reliable regional and sub-regional planning and operation of the BPS, consistent with Good Utility Practice

A Standard shall generally have the following characteristics:

- **Measurable** - A Standard shall establish technical or performance requirements that can be practically measured.
- **Relative to NERC Reliability Standards** - A Standard generally must go beyond, add detail to, or implement NERC Reliability Standards, or cover matters not addressed in NERC Reliability Standards.

### ***Format Requirements of a Regional Reliability Standard***

A Standard shall consist of the format requirements shown in the Regional Reliability Standard Template. These requirements apply to the development and revision of Standards. These requirements are necessary to achieve Standards that are measurable,

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enforceable, and consistent. Supporting documents to aid in the implementation of a Standard may be referenced by the Standard but are not part of the Standard itself.

### Regional Reliability Standard Format Requirement Template

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference ReliabilityFirst documentation.
<b>Title</b>	A brief, descriptive phrase identifying the topic of the Standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the Standard, noting any specific additions or exceptions. If not applicable to the entire ReliabilityFirst area, then a clear identification of the portion of the BPS to which the Standard applies. Any limitation on the applicability of the Standard based on electric facility requirements should be described.
<b>Effective Date and Status</b>	The effective date of the Standard or, prior to approval of the Standard, the proposed effective date.
<b>Purpose</b>	The purpose of the Standard. The purpose shall explicitly state what outcome will be achieved or is expected by this Standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.

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<b>Risk Factor(s)</b>	<p>The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below:</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to abnormal condition.</p> <p>A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the BPS, or the ability to effectively monitor and control the BPS, but is unlikely to lead to BPS instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to BPS instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor and control the BPS; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS.</p>
<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measurements. Measurements that will be used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measurement identifies to whom the measurement applies. Each measurement shall be tangible, practical, and as objective as is practical. Achieving the full compliance level of each measurement should be a necessary and sufficient indicator that the requirement was met.</p>

Compliance Administration Elements

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

<b>Interpretations</b>	Any Reliability <i>First</i> interpretations of the Standards that were developed, and approved in accordance with the “Interpretation of Standards” section of this Procedure, to expound on the application of the Standard for unusual or unique situations or provide clarifications.
<b>Implementation Plan</b>	Each Reliability <i>First</i> Standard shall have an associated implementation plan describing the effective date of the Standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the Standard in the compliance program and other considerations in the initial use of the Standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
<b>Supporting References</b>	This section references related documents that support reasons for, or otherwise provide additional information related to the Standard Examples include, but are not limited to: <ul style="list-style-type: none"> <li>• Glossary of Terms</li> <li>• Developmental history of the Standard and prior versions</li> <li>• Subcommittee(s) responsible for Standard</li> <li>• Notes pertaining to implementation or compliance</li> <li>• Standard references</li> <li>• Procedures/Practices</li> <li>• Training and/or Technical Reference</li> </ul>

## Roles in the Regional Reliability Standards Development Process

### *Process Roles*

**Originator** - Any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the Reliability*First* BPS, is allowed to request a Standard be developed or an existing Standard is modified, or deleted, by creating a Standards Authorization Request (SAR). See Appendix B.

**Board** – The Reliability*First* Board shall act on any proposed Standard that has gone through the process contained in this Procedure. Once the Reliability*First* Board approves a Standard, compliance with the Standard will be enforced consistent with the By-laws and the terms of the Standard.

**Standards Committee (SC)** - The Reliability*First* SC will consider which requests for new or revised Standards shall be assigned for development (or existing Standards considered for deletion). The SC manages the Standards development process. The SC

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will advise the ReliabilityFirst Board on Standards presented for adoption by the ReliabilityFirst Board.

**Standards Process Manager (SPM)** – A person or persons on the ReliabilityFirst staff assigned the task of ensuring that the development, revision or deletion of Standards is in accordance with this Procedure. The SPM works to ensure the integrity of the process and consistency of quality and completeness of the Standards. The SPM facilitates the administration of all actions contained in all steps in the process.

**Standards Process Staff** – Employees of the ReliabilityFirst that work with or for the SPM.

**Interim Compliance Committee (ICC)** – The ReliabilityFirst committee responsible for the administration of the ReliabilityFirst Compliance Program. The duties of this committee includes, but not limited to, providing inputs and comments during the standards development process to ensure the measures will be effective and other aspects of the Compliance Program can be practically implemented.

**Standard Drafting Team (SDT)** – Normally a team of technical experts, and typically includes a member of the ReliabilityFirst Standards staff and the Originator, assigned the task of developing a proposed Standard based upon an approved SAR using the Standard development process contained in this Procedure.

**Ballot Body (BB)** – The Ballot Body comprises all entities that qualify for one or more of the categories and are registered with ReliabilityFirst as potential ballot participants in the voting on standards. The categories of registration within the Ballot Body and the registration process are described in Appendix D.

**Ballot Pool** – The Ballot Pool is comprised of those members of the Ballot Body that register to vote for each particular standard that is up for vote. A separate Ballot Pool is established for each standard up for vote. Only individuals who have joined the Ballot Pool for that particular standard are eligible to vote on a standard.

**Regional Reliability Standard Development Process** (Flow chart of Process shown in Appendix C)

### *Assumptions and Prerequisites*

The ReliabilityFirst Regional Reliability Standards Development Process has the following characteristics:

- **Fair due process** - The ReliabilityFirst standards development process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the

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proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

- **Openness** - Participation is open to all Organizations who are directly and materially affected by the Reliability*First* region BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in the Reliability*First*, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to the Reliability*First* membership and to others.
- **Balanced** - The Reliability*First* standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.
- **Inclusive** - Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the BPS in the Reliability*First* area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.
- **Transparent** - All actions material to the development of Reliability*First* Standards shall be transparent. All standards development meetings shall be open and publicly noticed on Reliability*First*'s Web site.
- Does not unnecessarily delay development of the proposed Standard.

**Note:** The term “days” refers to calendar days.

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

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

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

***Step 1 - Development of a Standards Authorization Request (SAR) to Develop, Revise or Delete a Regional Reliability Standard***

Any individual representing an organization (Originator) which is directly or materially impacted by the operation of the BPS within the geographical footprint of the ReliabilityFirst may request, via a submittal of a Standard Authorization Request (SAR) form, the development, modification, or deletion of a ReliabilityFirst Standard. Any such request shall be submitted to the ReliabilityFirst SPM, or his/her designee, or by another process as otherwise posted on the ReliabilityFirst website. The SAR form may be downloaded from the ReliabilityFirst website.

The SAR contains a description of the proposed Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Standard. The SPM will verify that the submitted SAR form has been adequately completed. The SPM may offer the Originator suggestions regarding changes and/or improvements to improve clarity and assist the ReliabilityFirst community to understand the Originator's intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the SPM will electronically acknowledge receipt of the SAR.

The SPM will forward all adequately completed SARs to the ReliabilityFirst SC. Within 60 days of receipt of an adequately completed SAR, the SC shall determine the disposition of the SAR. The disposition decision and decision process shall use the normal "business rules and procedures" of the SC then in effect. The SC may take one of the following actions:

- Accept the SAR as a candidate for: development of a new Standard, revision of an existing Standard or deletion of an existing Standard. The SC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The SC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the SC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision.
- Remand the SAR back to the Originator for additional work. The SPM will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the SC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the SC

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Any SAR that is accepted by the SC for development of a Standard (or modification or deletion of an existing Standard) shall be posted for public viewing on the ReliabilityFirst website within no greater than 30 days of acceptance by the SC. The status of posted SARs will be publicly noted at regularly scheduled (appropriately two weeks) intervals.

Any documentation of the deliberations of the SC concerning SARs shall be made available according to the “ReliabilityFirst Standards Committee Governance” document then in effect.

The SC shall submit a written report to the ReliabilityFirst Board on a periodic basis (at least at every regularly scheduled ReliabilityFirst Board meeting) showing the status of all SARs that have been brought to the SC for consideration.

### ***Step 2 – Formation of the Standard Drafting Team and Declaration of Milestone Date***

Upon acceptance by the SC of a SAR for development of a new Standard (or modification or deletion of an existing Standard), the SC shall direct the SPM to develop a qualified balance slate for the SDT using the specific directions and preferences of the SC. The SPM will send out self-nomination forms to solicit SDT nominees. The SDT will consist of a group of people (members of ReliabilityFirst and, as appropriate, non-members) who collectively have the necessary technical expertise and work process skills. The SPM will recommend a slate of ad-hoc individuals or a preexisting task force, work group or similar for the SDT based upon the SC’s desired SDT capabilities.

The SC may also direct the SPM to designate an existing ReliabilityFirst committee (or subset thereof) as the SDT augmented by other persons as may be appropriate for the subject matter. The SC will insure that SDT membership includes all necessary administrative support. This support typically includes a ReliabilityFirst staff member and the Originator if he/she chooses to participate. The SC appoints the interim chair (should not be a staff person) of the SDT. The SDT will elect the permanent Chair and Vice-chair at its first meeting.

The SPM submits the proposed list of names of the SDT to the SC. The SC will either accept the recommendations of the SPM or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

Upon approval of the SDT slate, the SC will declare a preliminary date on which the SDT is expected to have ready a completed draft Standard and associated supporting documentation available for consideration by the ReliabilityFirst membership.

### ***Step 3 – Work and Work Product of the Standard Drafting Team***

The SDT will then develop a work plan for completing the Standard development work, including the establishment of milestones for completing critical elements of the work in sufficient detail to ensure that the SDT will meet the date objective established by the SC

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or the SDT shall propose an alternative date. This plan is then delivered to the SC for its concurrence.

The SDT is to meet, either in person or via electronic means as necessary, establish sub-work teams (made up of members of the SDT) as necessary, and performs other activities to address the parameters of the SAR and the milestone date(s) established by the SC.

The work product of the SDT will consist of the following:

- A draft Standard consistent with the SAR on which it was based.
- An assessment of the impact of the SAR on neighboring regions, and appropriate input from the neighboring regions if the SAR is determined to impact any neighboring region.
- An implementation plan, including the nature, extent and duration of field-testing, if any.
- Identification of any existing Standard that will be deleted, in part or whole, or otherwise impacted by the implementation of the draft Standard.
- Technical reports, white papers and/or work papers that provide technical support for the draft Standard under consideration.
- Document the perceived reliability impact should the Standard be approved.

Upon completion of these tasks, the SDT submits these documents to the SC, which will verify that the proposed Standard is consistent with the SAR on which it was developed

The SDT regularly (at least once each month) informs the SC of its progress in meeting a timely completion of the draft Standard. The SDT may request of the SC scope changes of the SAR at any point in the Standard development process.

The SC may, at any time, exercise its authority over the Standards development process by directing the SDT to move to Step 4 and post for comment the current work product. If there are competing drafts, the SC may, at its sole discretion, have posted the version(s) of the draft Standard for comment on the *ReliabilityFirst* website. The SC may take this step at any time after a SDT has been commissioned to develop the Standard.

#### **Step 4 – *Comment Posting Period***

At the direction from the SC, the SPM then facilitates the posting of the draft Standard on the *ReliabilityFirst* website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The SPM shall also inform *ReliabilityFirst* Members and other potentially interested entities inside or outside of *ReliabilityFirst* of the posting using typical membership communication procedures then currently in effect or by other means as deemed appropriate. As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The Ballot Pool category description and associated requirements are in Appendix D.

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Within 30 days of the conclusion of 30-day comment posting period the SDT shall convene and consider changes to the draft Standard, the implementation plan and/or supporting technical documents based upon comments received. Based upon these comments, the SDT may elect to return to step 3 to revise the draft Standard, implementation plan and/or supporting technical documentation.

The SDT shall prepare a “modification report” summarizing the comments received and the changes made as a result of these comments. The modification report also summarizes comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. Responses to all comments will be posted on the ReliabilityFirst website no later than the next posting of the proposed Standard.

### **Step 5 – Posting for Voting by ReliabilityFirst Registered Ballot Body**

Upon recommendation of the SDT, and if the SC concurs that all of the requirements for development of the Standard have been met, the SPM will post the revised draft Standard, implementation plan, supporting technical documentation and the “modification report”. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

Entities may register in the BB at any time during the Standards process. The BB category description and associated rules are in Appendix D.

By 11:59 PM Central Prevailing Time (CPT) of the seventh day of the 15 day pre ballot posting period, registered BB entities intending to vote on the proposed standard must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The SPM will schedule a Vote by the Ballot Pool which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting. The Vote by the Ballot Pool is an advisory to the ReliabilityFirst Board.

The Ballot Pool shall be allowed to vote over a period of 15 days. It is expected that votes will be submitted electronically, but may be submitted through other means as approved by the SC.

All entities registered as part of the BB are eligible to participate in voting on proposed new Standards, Standard revisions or Standard deletions. There is a requirement to separately join a Ballot Pool to participate in voting for each standard. Each entity can join only in one category of the Ballot Pool and shall have one vote.

The voting results will be composed of only the votes from BB entities that have joined the Ballot Pool for the standard being voted on and responding within the 15 day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the ReliabilityFirst website prior to going to the SC or Board.

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### **Step 6A – Voting Receives Simple Majority of Affirmative Category Votes**

A simple majority<sup>3</sup> of votes within a category determines the vote for that category. If there is a simple affirmative majority of category votes (only those categories with votes cast will be considered) during the 15-day voting period and a quorum is met (a quorum consists of a simple majority of individuals who have joined the Ballot Pool), the SC will forward the Standard to the Reliability*First* Board for action (Step 7).

### **Step 6B – Voting Does Not Receive Simple Majority of Affirmative Category Votes or a Quorum is Not Met**

If a draft Standard does not receive a simple affirmative majority of votes determined for each category (only those categories with votes cast will be considered) during the 15-day voting period or a quorum is not met during the 15-day voting period, the SC may:

- Direct the existing SDT to reconsider or modify certain aspects of the draft Standard and/or implementation plan. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The SC may require a second comment period prior to the second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.
  - If there is a simple affirmative majority of categories with votes cast and a quorum is met during the second voting period, the SC will forward it to the Reliability*First* Board for action (Step 7).
  - If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the Reliability*First* Board. The SC may also submit an assessment, opinion and recommendations to the Reliability*First* Board (Step 7).
- Revise the SAR on which the draft Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The SC may require a second comment period prior to a second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.
  - If there is a simple affirmative majority of categories with votes cast during the second voting period and a quorum is met, the SC will forward it to the Reliability*First* Board for action (Step 7).

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<sup>3</sup> For the purposes of determining majority within a category, an abstention is not considered a vote. Board Approval December 6<sup>th</sup>, 2007  
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- If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the ReliabilityFirst Board. The SC may also submit an assessment, opinion and recommendations to the ReliabilityFirst Board (Step 7).
- Recommend termination of all work on the development of the Standard action under consideration and so notify the ReliabilityFirst Board.

***Step 7 – Action by the ReliabilityFirst Board***

A draft Standard submitted to the ReliabilityFirst Board for action must be publicly posted at least 30 days prior to action by the Board. At a regular or special meeting, the ReliabilityFirst Board shall consider adoption of the draft Standard. The Board will consider the results of the voting and dissenting opinions. The Board will consider any advice offered by the SC.

Draft Standards that received a simple affirmative majority of categories with votes cast shall be delivered to the ReliabilityFirst Board for their action. The ReliabilityFirst Board shall be provided with an “informational package” which includes:

- The draft Standard and any modification or deletion of other related existing Standard(s)
- Implementation Plan (including recommending field testing and effective dates)
- Technical Documentation supporting the draft Standard
- A summary of the vote and summary of the comments and responses that accompanied the votes.

The ReliabilityFirst Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.
- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

Draft Standards that did not receive a simple affirmative majority of categories with votes cast in the second voting period shall be delivered to the ReliabilityFirst Board for their action. The ReliabilityFirst Board shall be provided with an “informational package”.

The ReliabilityFirst Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.

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- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

Once a regional Reliability*First* Standard is approved by the Board, the standard will be submitted to NERC for approval and filing with FERC.

***Step 8 - Implementation of a Regional Reliability Standard***

Upon approval of a draft Standard action by FERC, the SPM will notify the membership of the effective date through the normal and customary membership communication procedures and processes then in effect. The SPM will also notify the Reliability*First* Compliance Staff for integration into the Reliability*First* Compliance Program.



## **Appendix A**

### **Maintenance of Regional Reliability Standards Development Process**

Significant changes to this Procedure shall begin with the preparation of a SAR and be handled using the same procedure as a request to add, modify, or delete a Standard.

The Reliability*First* SC has the authority to make ‘minor’ changes to this Procedure as deemed appropriate by the SC and subject to the SC voting practices and procedures according to the “Reliability*First* Standards Committee Governance” document then in effect. The SC shall promptly notify the Reliability*First* Board of such ‘minor’ changes to this Procedure for their review and concurrence at the next Reliability*First* Board meeting.

### **Maintenance of Regional Reliability Standards**

The SC shall ensure that each Standard shall be reviewed at least once every five years from the effective date of the Standard or the latest revision to the Standard, whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the SC shall recommend to the Reliability*First* Board that the Standard be reaffirmed. If the review indicates a need to revise or delete a Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this Procedure.

### **Urgent Action**

Under certain conditions, the SC may designate a proposed Standard or revision to a Standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed Standard or revision could materially impact reliability of the BPS. The SC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a Standard.

A requester prepares a SAR and a draft of the proposed Standard and submits both to the SPM. The SAR must include a justification for urgent action. The SPM submits the request to the SC for its consideration. If the SC designates the requested Standard or revision as an urgent action item, then the SPM shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 5. Processing will continue as outlined in the subsequent steps. In the event additional drafting is required, a SDT will be assembled as outlined in the Procedure.

Any Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the Standard permanent, then the Standard would be required to go through the full Standard

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development process. All urgent action Standards require ReliabilityFirst Board, NERC and FERC approval, as outlined for Standards in the regular process.

Urgent actions that expire may be renewed using the urgent action process again, in the event a permanent Standard is not adopted. In determining whether to authorize an urgent action Standard for a renewal ballot, the SC shall consider the impact of the Standard on the reliability of the BPS and whether expeditious progress is being made toward a permanent replacement Standard. The SC shall not authorize a renewal ballot if there is insufficient progress toward adopting a permanent replacement Standard or if the SC lacks confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action Standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement Standard. With these principles, there is no predetermined limit on the number of times an urgent action may be renewed. However, each urgent action Standard renewal shall be effective only upon approval by the ReliabilityFirst Board, NERC and FERC.

Any person or entity, including the SDT working on a permanent replacement Standard, may at any time submit a SAR proposing that an urgent action Standard become a permanent Standard by following the full Standards process.

### **Interpretations of Standards**

All persons who are directly and materially affected by the reliability of ReliabilityFirst BPS shall be permitted to request an interpretation of the standard. The person requesting an interpretation will send a request to the SPM explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard.

The SPM, along with guidance from the SC, will assemble a team with the relevant expertise to address the request. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The SPM submits the proposed list of names of the IDT to the SC. The SC will either accept the recommendations of the SPM or modify the IDT slate.

As soon as practical (not more than 45 days), the team will draft a written interpretation to the standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Standard addressing only the issues raised, the team will forward the draft interpretation to the SPM. The SPM will forward the draft interpretation to the Interim Compliance Committee (ICC). The ICC is to assess if the inclusion of the interpretation lessens the measurability of the Standard. In addition, the SPM will forward the interpretation to the Reliability Committee (RC). Barring receipt of an opinion from either the ICC or RC within 21 calendar days, that the interpretation sufficiently lessens measurability or is not technically appropriate for the Standard, respectively, the SPM will forward the interpretation to the SC. The SC will determine if

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the interpretation is consistent with the Standard. The SC will forward the interpretation to the Reliability *First* Board for informational purposes as being appended to the approved Standard.

Note: In the event that the ICC determines that measurability is lessened, the ICC shall provide an explanation of its reasoning to the SPM and IDT for inclusion in a subsequent revision. The RC shall in a similar manner provide an explanation of its reasoning if it determines that the interpretation makes the standard technically inappropriate. In either case, the IDT and SPM will continue to re-circulate the interpretation as stated above.

The interpretation will stand until such time as the standard is revised through the normal process, at which time the standard will be modified to incorporate the clarifications provided by the interpretation.

## **Appeals**

Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a Standard shall have the right to appeal. This appeals process applies only to the Standards process as defined in this Procedure.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

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

### ***Level 1 Appeal***

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the SPM that describes the substantive or procedural action or inaction associated with a Standard or the standards process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the SPM shall prepare a written response addressed to the appellant as soon as practical but not more than 45-days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the standard.

### ***Level 2 Appeal***

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If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the SPM, the SPM shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by the Reliability*First* Board.

In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The SPM shall post the complaint and other relevant materials and provide at least 30-days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the SC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a reliability standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to the Reliability*First* Board for consideration at the time the Board decides whether to adopt a particular reliability standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30-days after the announcement of the vote on the Standard in question.

## Appendix B

### Standard Authorization Request

The SC shall be responsible for implementing and maintaining this form as needed to support the information requirements of the standards development process in this Procedure. Changes to this form are considered minor, and therefore subject to only the approval of the SC.

#### ReliabilityFirst Standard Authorization Request Form

**ReliabilityFirst  
will complete**

Title of Proposed Standard
Request Date

ID
Authorized for Posting
Authorized for Development

#### *SAR Originator Information*

Name	<b>SAR Type</b> (Check box for one of these selections.)	
Company	<input type="checkbox"/>	New Standard
Telephone	<input type="checkbox"/>	Revision to Existing Standard
Fax	<input type="checkbox"/>	Withdrawal of Existing Standard
E-mail	<input type="checkbox"/>	Urgent Action

**Purpose** (Provide one or two sentences.)

----------

**Industry Need** (Provide one or two sentences.)

----------

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**Brief Description** (A few sentences or a paragraph.)

***Reliability Functions***

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

	Reliability Authority	Ensures the reliability of the bulk transmission system within its Reliability Authority area. This is the highest reliability authority.
	Balancing Authority	Integrates resource plans ahead of time, and maintains load-interchange-resource balance within its metered boundary and supports system frequency in real time
	Generator Owner	Owns and maintains generating units
	Interchange Authority	Authorizes valid and balanced Interchange Schedules
	Planning Authority	Plans the BPS
	Resource Planner	Develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area
	Transmission Planner	Develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area
	Transmission Service Provider	Provides transmission services to qualified market participants under applicable transmission service agreements
	Transmission Owner	Owns transmission facilities
	Transmission Operator	Operates and maintains the transmission facilities, and executes switching orders
	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer

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	Generator Operator	Operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services
	Purchasing-Selling Entity	The function of purchasing or selling energy, capacity and all necessary Interconnected Operations Services as required
	Load-Serving Entity	Secures energy and transmission (and related generation services) to serve the end user
	Market Operator	Integrates energy, capacity, balancing, and transmission resources to achieve an economic, reliability-constrained dispatch of resources. The dispatch may be either cost-based or bid-based
	Regional Reliability Organizations	An entity that ensures that a defined area of the BPS is reliable, adequate and secure. A member of the North American Electric Reliability Council. The Regional Reliability Organization can serve as the Compliance Monitor

NOTE: The SDT may find it necessary to modify the initial reliability function responsibility assignment as a result of the standards development and comments received.

*Reliability Principles*

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

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*Market Interface Principles*

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

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***Detailed Description*** (Provide enough detail so that an independent entity familiar with the industry could draft a Standard based on this description.)

**Related Standards (NERC and Regional)**

Standard No.	Explanation

***Related SARs***

SAR ID	Explanation

### **Implementation Plan**

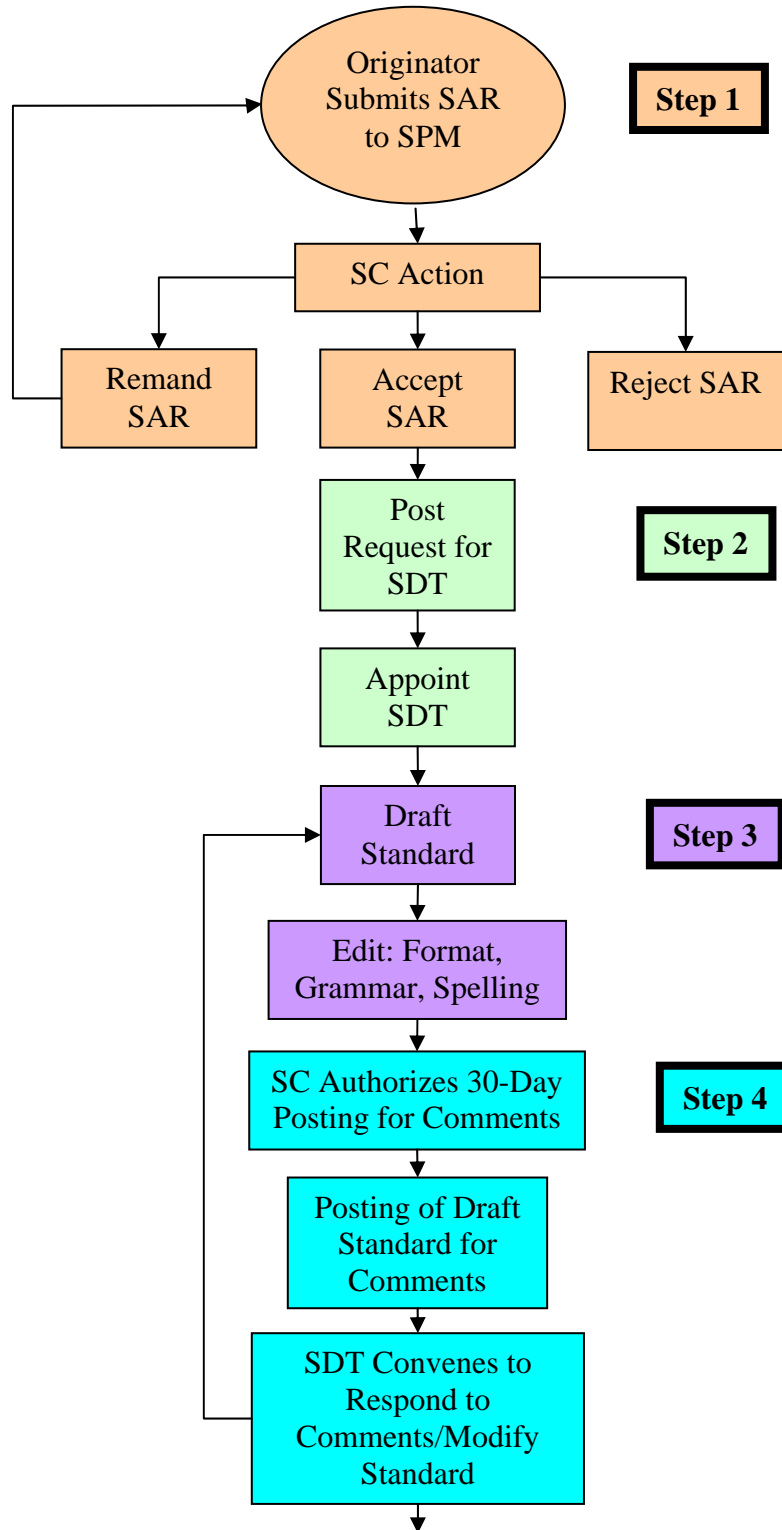
<b>Description</b> <i>(Provide plans for the implementation of the proposed standard, including any known systems or training requirements. Include the reliability risk(s) associated with the violation that the standard will mitigate, and the costs associated with implementation.)</i>
<b>Proposed Implementation</b> <b>days after Board adoption or</b>
<b>on (date):</b>

#### **Assignments**

	<i>Assignment</i>
<b>Team Members</b>	
<b>ReliabilityFirst Staff</b>	

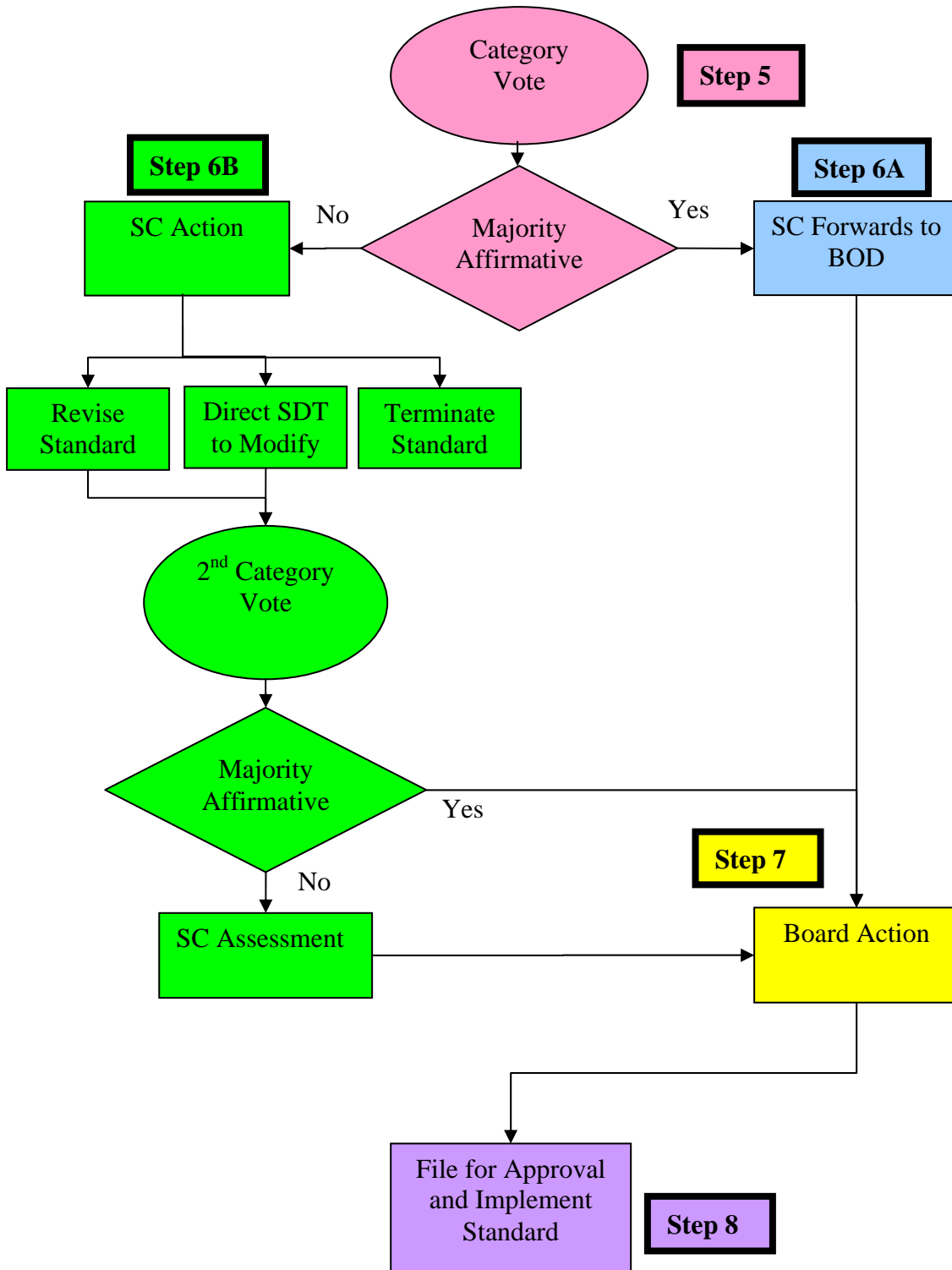
# Appendix C

## Flowchart for Standards Process



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## **Appendix D**

### **Ballot Pool Categories**

For the purposes of category Ballot Pool registration and voting, an entity shall register in only one of the following categories for each standard that will be voted on (only one vote is allowed per entity per vote):

Category 1 – Transmission Owner, Transmission Operator, Transmission Service Provider

Category 2 – Generator Owner, Generator Operator

Category 3 – Load Serving Entity, Purchasing and Selling Entity, End User

Category 4 – Reliability Coordinator, Planning Coordinator, Transmission Planner, Resource Planner, Regional Transmission Organization, Balancing Authority, regulatory or governmental agency

Category 5 – Distribution Provider

### **Ballot Body Registration**

Entities may register in the BB at any time during the Standards process. The SPM shall review all applications for joining the BB, and make a determination of whether they qualify for the self-selection category(ies). In order to comment or vote you must have an active membership in the BB. When you submit your registration request to join the BB, you are placed in a “pending stage” until your account is activated. Activation of your account may take up to 24 hours. You will be unable to submit comments or join a Ballot Pool until your account is activated. The contact designated as primary representative to ReliabilityFirst is the voting member with the secondary contact as the backup.

Note: Registration for a BB is not the same as registration for the compliance registry. Although the terminology used to describe the BB categories in most cases has the same meaning as the terms used in the NERC Functional Model, registration in a BB goes beyond the compliance registry in that entities smaller than those stated in the compliance registry guidelines are allowed to register in a BB. Entities shall have evidence that they qualify for the BB category they register in. Such evidence shall be available for the SPM review to verify BB registration and may include compliance registration.

### **Ballot Pool Formation**

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In order to participate in voting on a particular standard, an entity must join the Ballot Pool being established for the standard as follows:

1 – As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

2 - By close of business of the seventh day of the 15 day pre ballot posting period, entities wishing to vote must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

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

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

#### **1.1 Obligations of ReliabilityFirst Corporation**

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

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

ReliabilityFirst has adopted the pro forma compliance program without exception, as revised by NERC. ReliabilityFirst has adopted the Attachment 2 Uniform Eastern Interconnection Hearing Process with the following exceptions:

- a. The ReliabilityFirst Hearing Procedure allows members of the Hearing Body to introduce information to the proceeding upon Motion. The members of the ReliabilityFirst Compliance Committee, from which the Hearing Body is drawn, may have unique expertise, knowledge and experience and may be able to contribute useful background information and documentation to the hearing procedure decision process. The ReliabilityFirst Hearing Procedure provides that any hearing participant may object to the introduction of evidence by the Hearing Body and seek to submit its own evidence in response to the information or documents offered by the Hearing Body. A decision to deny the responsive evidence or admit evidence over objection is to be explained in the hearing record.
- b. Whereas NERC adopts the generally recognized rules of evidence, the ReliabilityFirst Hearing Procedure does not incorporate the generally recognized rules of evidence but rather allows our Hearing Officer to exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and the evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. ReliabilityFirst believes that allowing a degree of freedom in the introduction of evidence in the Hearing Procedure allows for the most expeditious, thorough and just proceeding. Furthermore, such an evidentiary policy provides all participants the opportunity to submit all relevant facts and evidence for consideration by the Hearing Officer and Hearing Body in order to promote a fair and impartial proceeding that includes all of the relevant facts and completes an inclusive record to serve as a basis for a correct and



legally sustainable ruling, decision or order that promotes and advances real-world reliability.

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

Reliability*First* shall establish a hearing body with authority to conduct and render decisions in a formal compliance hearing of a Registered Entity who is the subject of a notice of alleged violation, proposed penalty or sanction, contested mitigation plan or contested remedial action directive. Reliability*First's* hearing body generally will be the Board Compliance Committee (CC), which is a portion of the full Board of Directors. The CC is comprised of five (5) Directors, three (3) of which are independent Board of Director members, and two (2) that are stakeholder Board of Director members. For the Hearing Body to take action at a hearing, a quorum must be present. A quorum is a majority of the members of the Hearing Body, provided that at least two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present.

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

There are no other decision-making bodies within the Reliability*First* organizational structure with regards to the compliance program. The Compliance Committee of the Board of Directors has been given the responsibility and authority to make all compliance program related decisions.



COMPLIANCE MONITORING  
AND  
ENFORCEMENT PROGRAM

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

## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

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

#### 1.1 Definitions

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

## Compliance Monitoring and Enforcement Program

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

- 1.1.10** Exception Reporting: Information provided to ReliabilityFirst by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including a ReliabilityFirst decision, Settlement Agreement, or otherwise.
- 1.1.12** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to ReliabilityFirst in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to ReliabilityFirst on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15** ReliabilityFirst Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within ReliabilityFirst's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16** ReliabilityFirst Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be

## Compliance Monitoring and Enforcement Program

actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by ReliabilityFirst, (3) the methods to be used by ReliabilityFirst for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) ReliabilityFirst's Annual Audit Plan.

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

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

## **Compliance Monitoring and Enforcement Program**

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

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

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

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations or restrictions placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction.

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

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

Enforcement actions taken by ReliabilityFirst through the Compliance Program may include the imposition of remedial actions, sanctions, and penalties, where applicable, which shall be based on the schedule of penalties and sanctions approved for implementation by FERC and other Applicable Governmental Authorities. The imposition and acceptance of sanctions and penalties



## Compliance Monitoring and Enforcement Program

shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards. Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

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

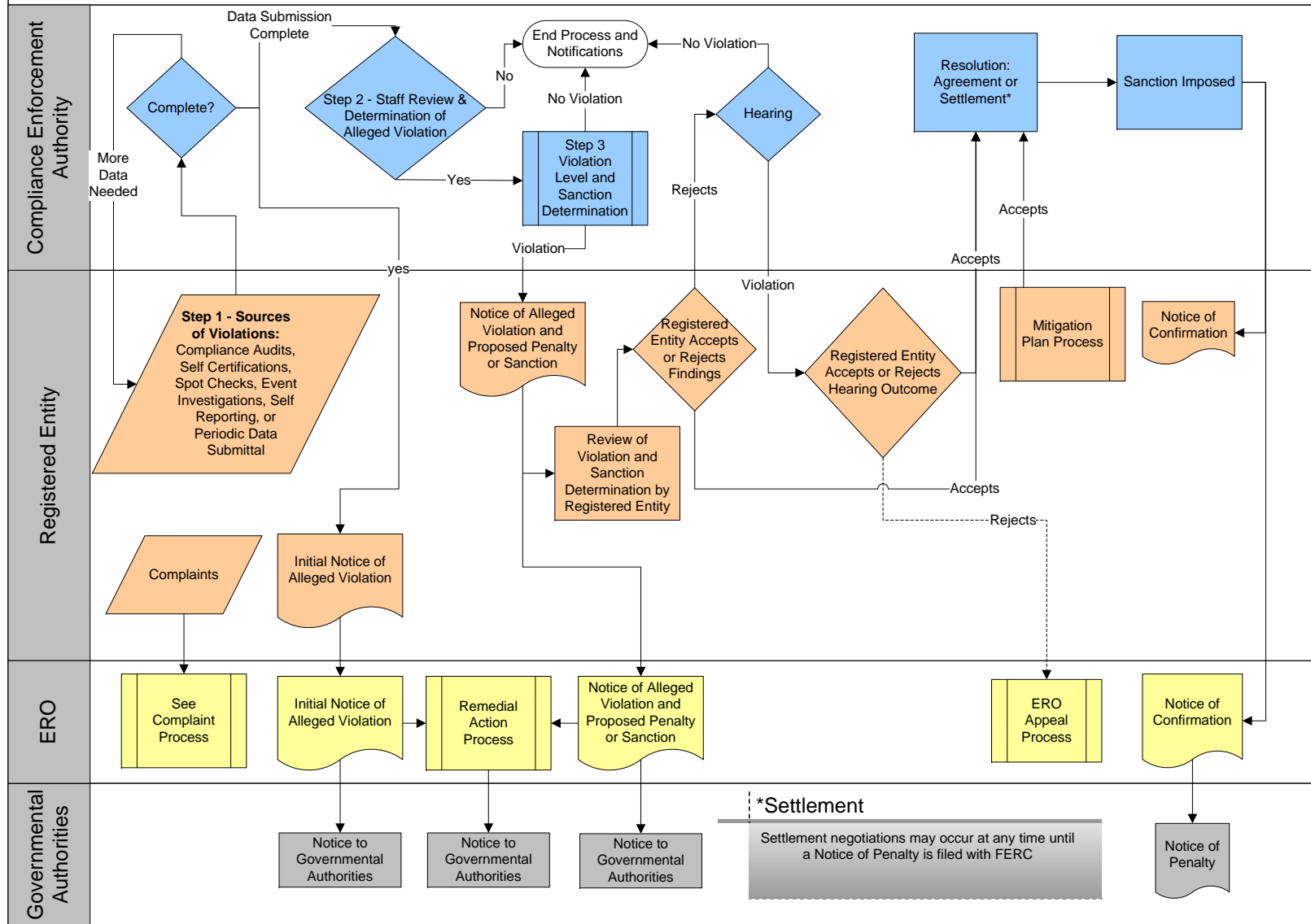
Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request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

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

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

# Compliance Monitoring and Enforcement Program

## NERC Compliance Monitoring and Enforcement Program Overview



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

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

#### 3.1.1 Compliance Audit Process Steps

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

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

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

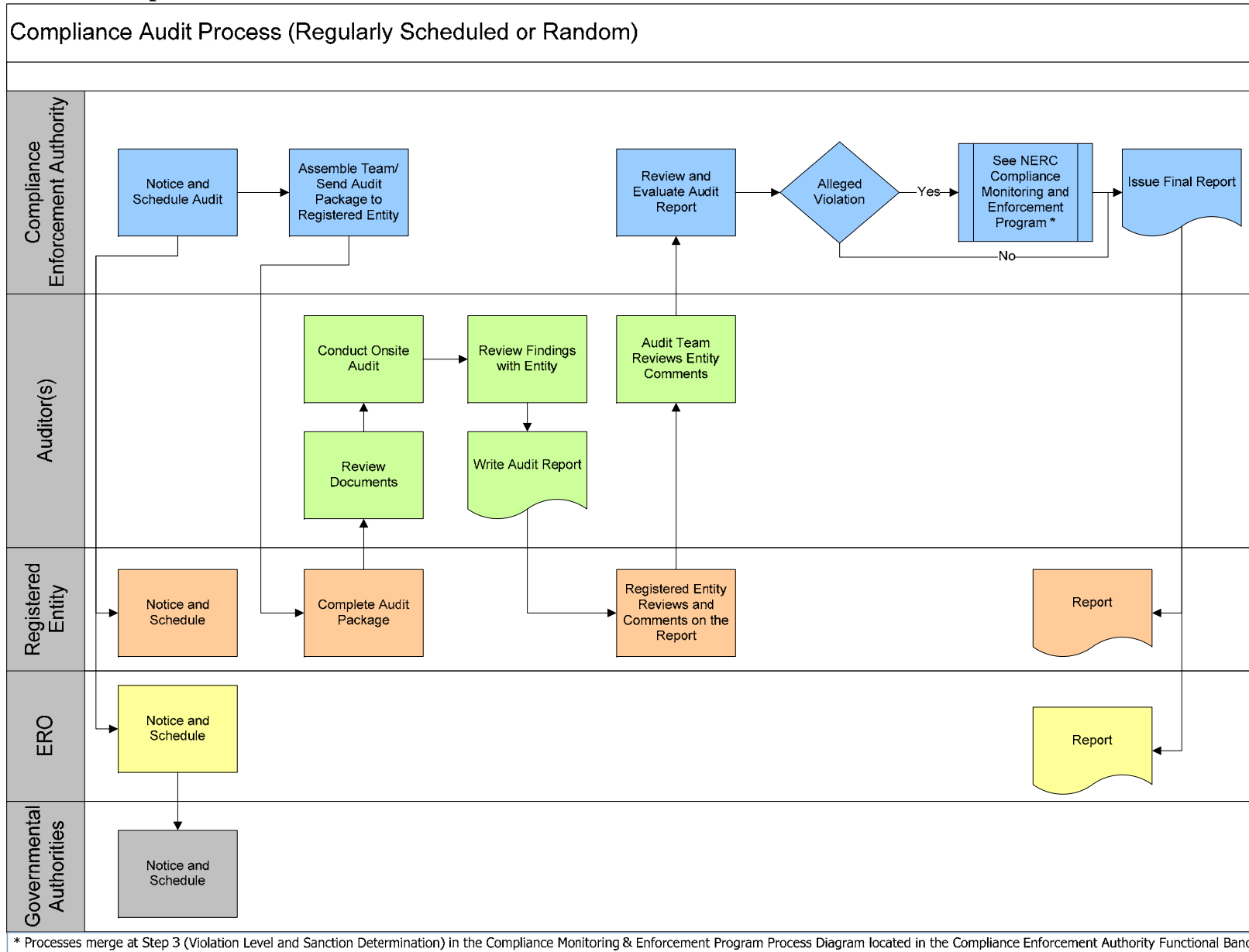
## Compliance Monitoring and Enforcement Program

audit report, including an assessment of compliance with the Reliability Standards, to ReliabilityFirst.

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

# Compliance Monitoring and Enforcement Program

**Figure 3.1 – Compliance Audit Process**



## **Compliance Monitoring and Enforcement Program**

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

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

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

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

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

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

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

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

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

The audit team shall be comprised of staff personnel from ReliabilityFirst and may include contractors and industry volunteers as determined by ReliabilityFirst to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from ReliabilityFirst and is responsible for the conduct of the Compliance Audit and preparation of

## Compliance Monitoring and Enforcement Program

the audit report. At their discretion, NERC Compliance Staff may participate on any ReliabilityFirst Compliance Audit team either as an observer or as an audit team member as determined by ReliabilityFirst. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

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

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

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

### 3.1.6 Compliance Audit Reports

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

## **Compliance Monitoring and Enforcement Program**

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

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

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

### **3.2 Self-Certification**

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

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

#### **3.2.1 Self-Certification Process Steps**



## Compliance Monitoring and Enforcement Program

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

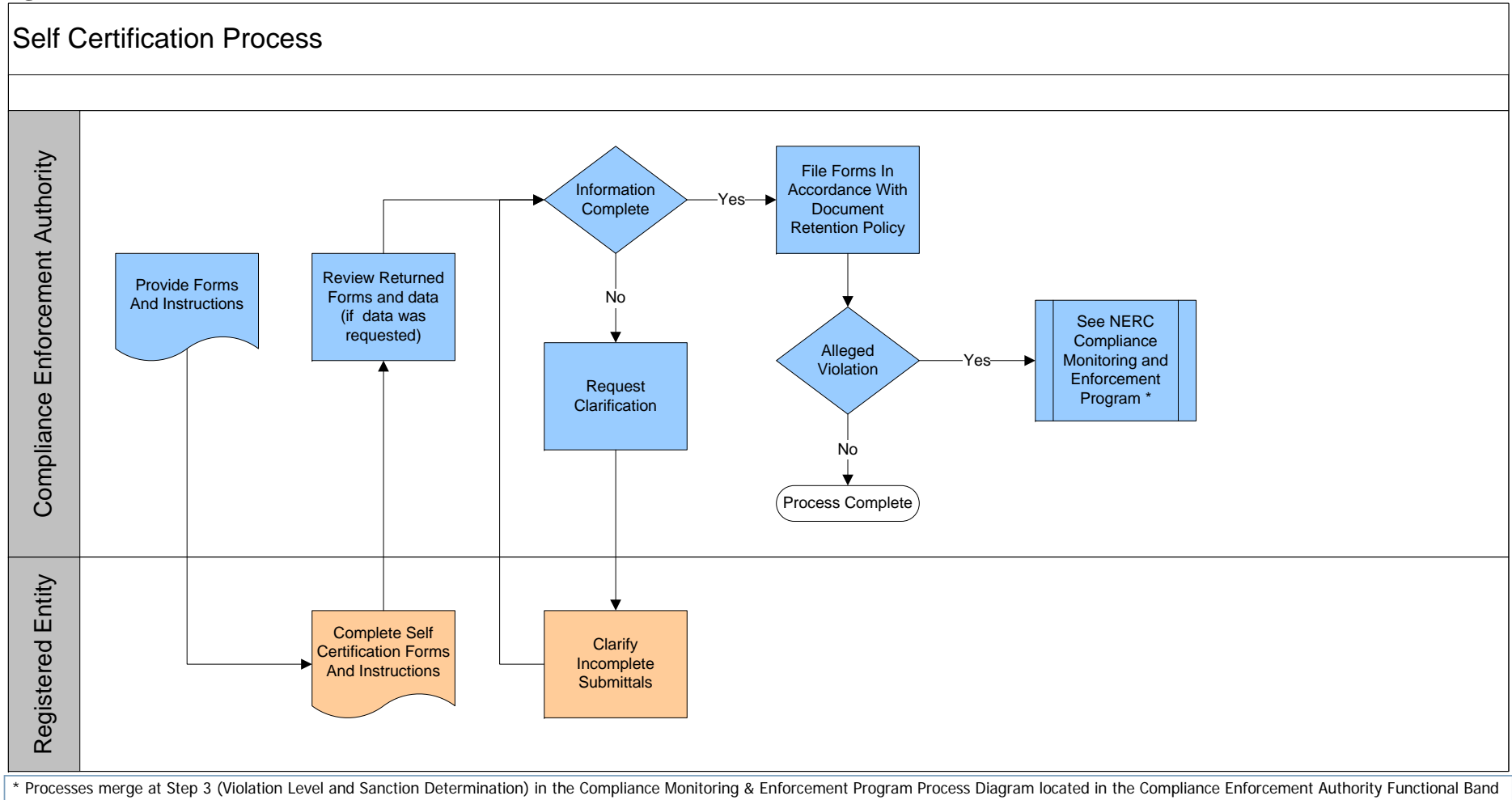
- ReliabilityFirst posts and updates the reporting schedule and informs Registered Entities. ReliabilityFirst ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.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

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

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

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

#### 3.3.1 Spot Checking Process Steps

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

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

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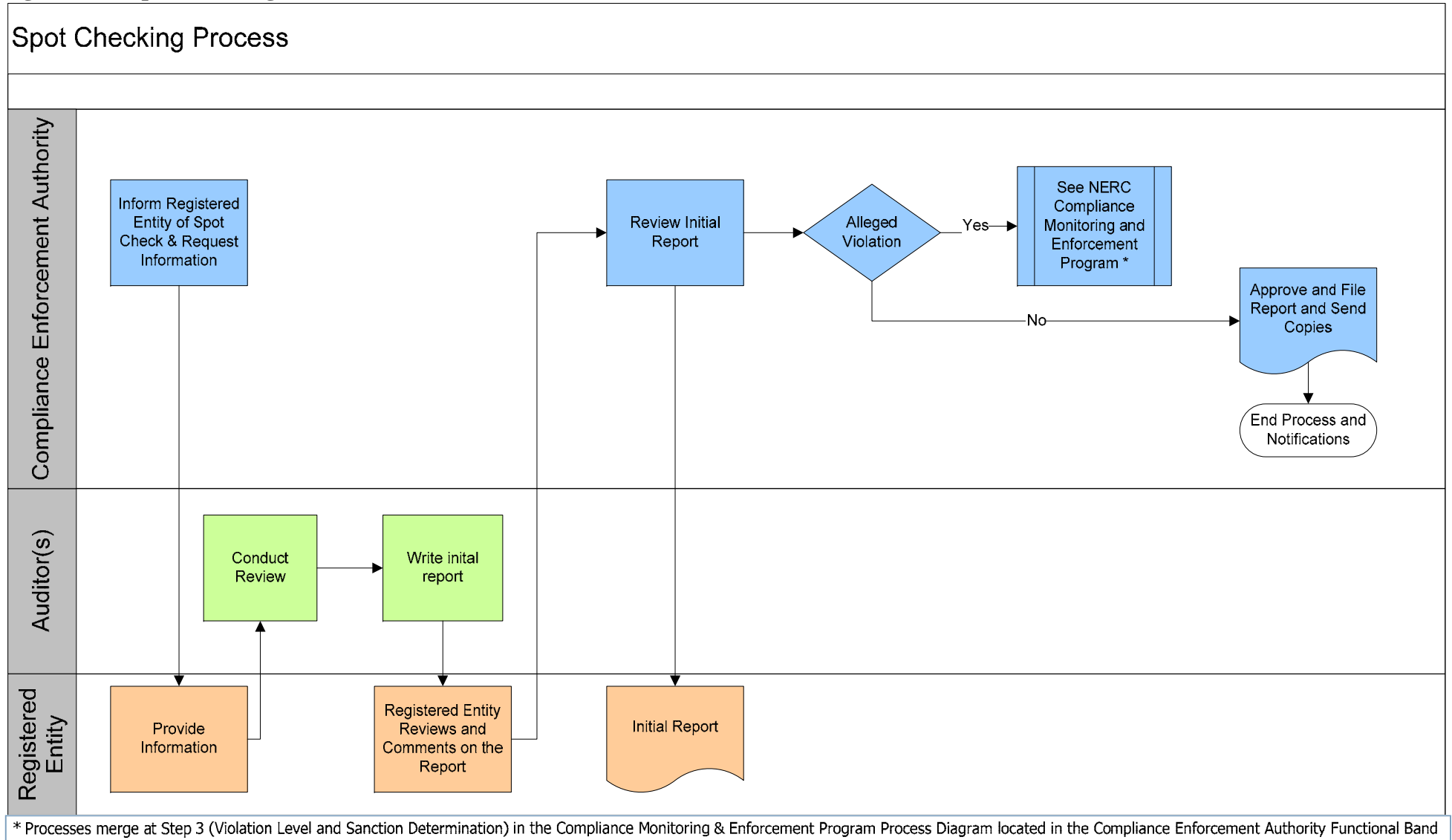
<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of ReliabilityFirst's receipt of data.

## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

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

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

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

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

#### 3.4.1 Compliance Violation Investigation Process Steps

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

## Compliance Monitoring and Enforcement Program

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

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

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

## Compliance Monitoring and Enforcement Program

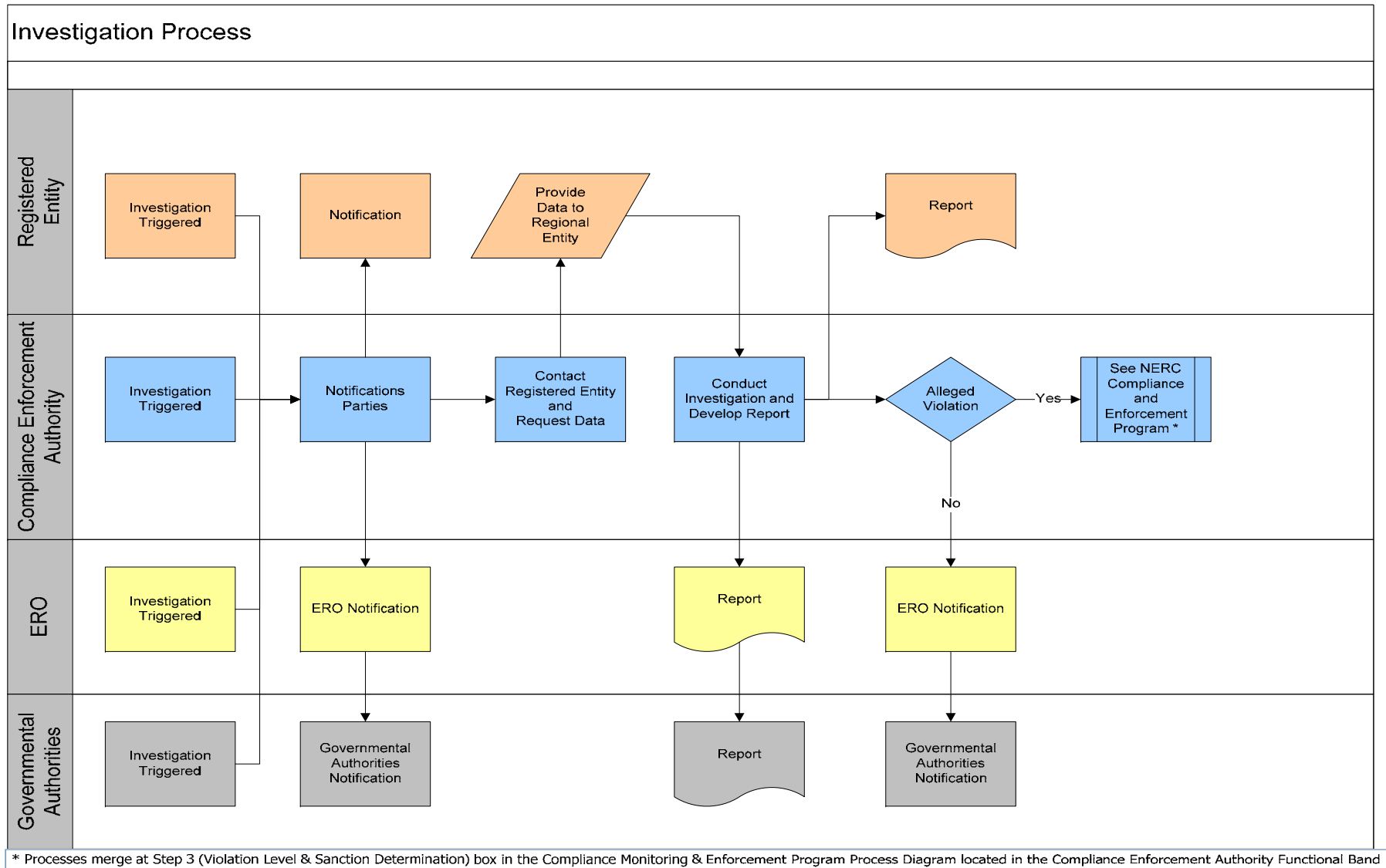
ten (10) business day period. ReliabilityFirst will make a final determination as to whether the individual will participate in the investigation of the Registered Entity.

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



# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

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

#### 3.5.1 Self-Reporting Process Steps

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

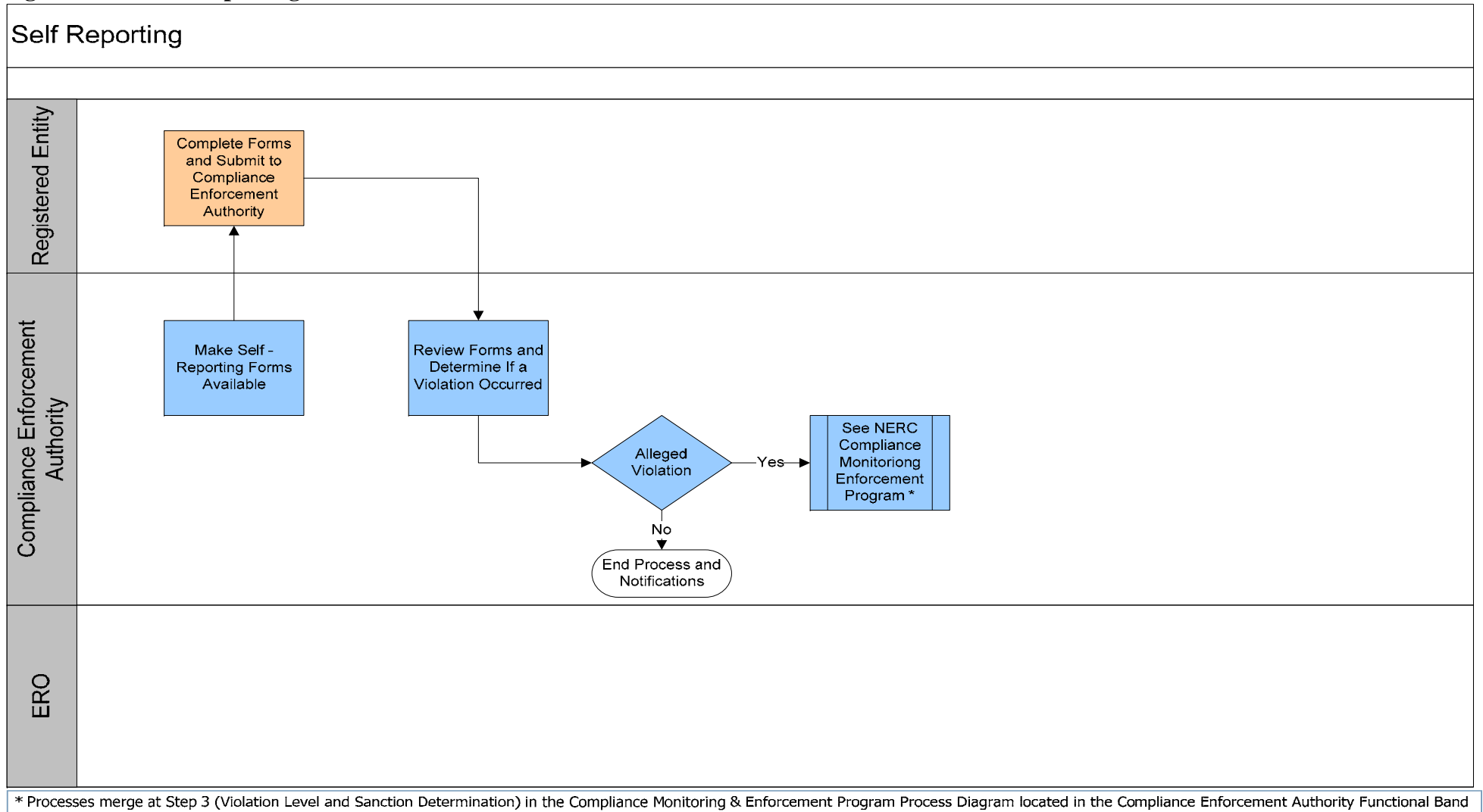
- ReliabilityFirst posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to ReliabilityFirst.
- ReliabilityFirst reviews the information to determine compliance with the Reliability Standards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

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

# Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process



## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

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

#### 3.6.1 Periodic Data Submittals Process Steps

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

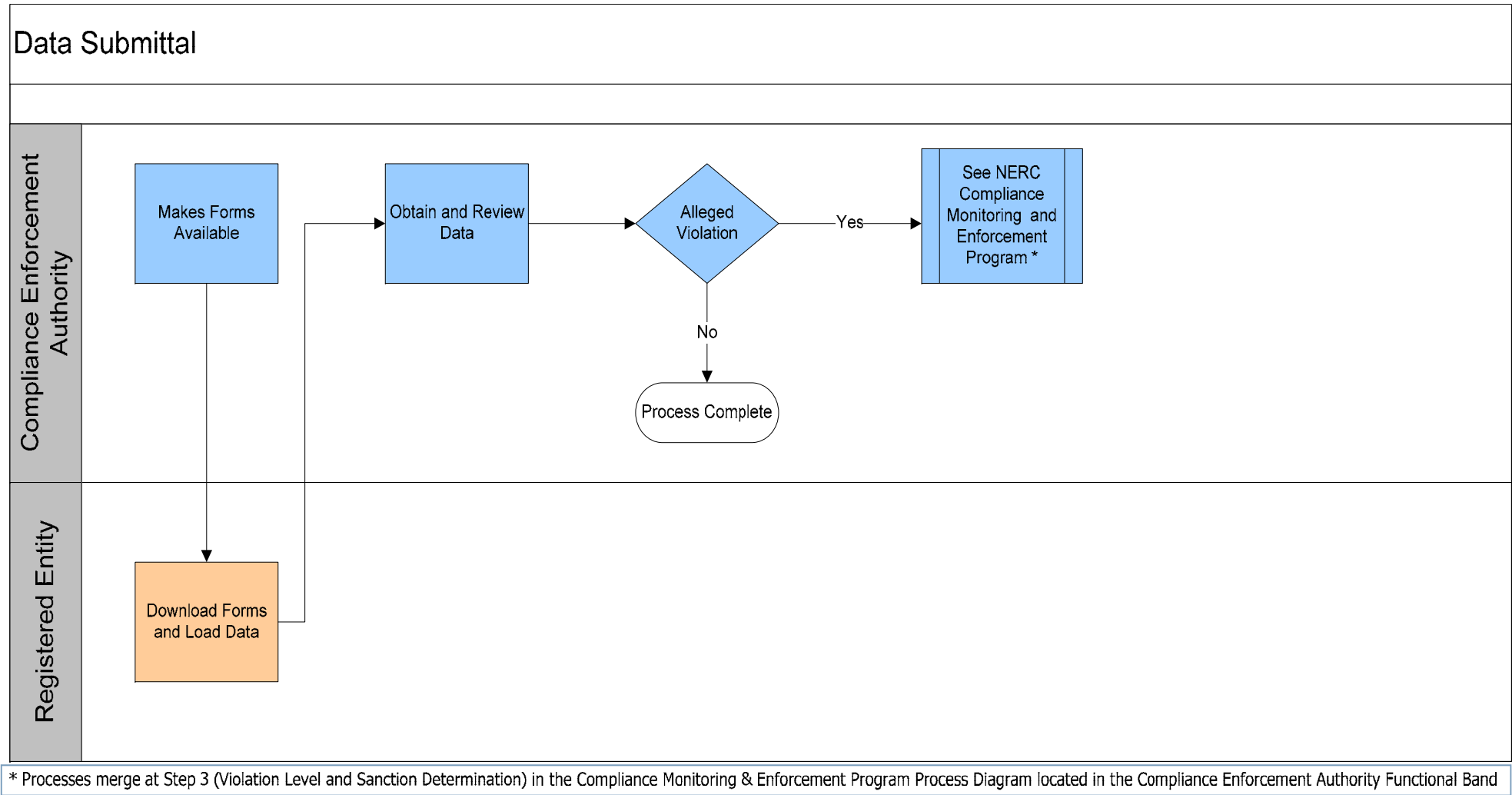
- ReliabilityFirst posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. ReliabilityFirst ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being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

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

# Compliance Monitoring and Enforcement Program

## Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

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

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

### 3.8 Complaints

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

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

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

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

#### 3.8.1 Complaint Process Steps

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

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

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

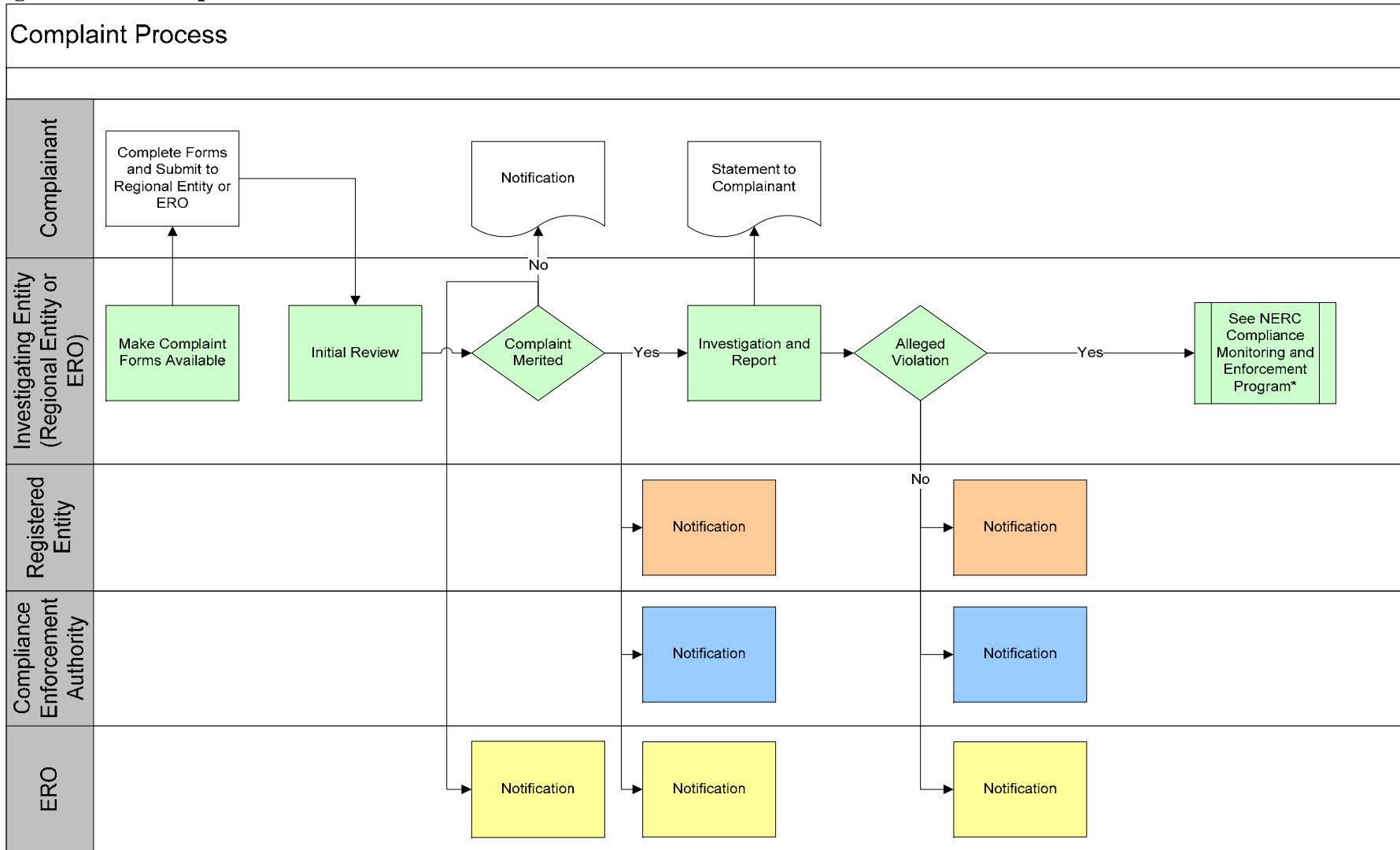
## Compliance Monitoring and Enforcement Program

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

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

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

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



## **Compliance Monitoring and Enforcement Program**

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

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

## **4.0 ANNUAL IMPLEMENTATION PLANS**

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

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

### **4.2 ReliabilityFirst Implementation Plan**

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

## **5.0 ENFORCEMENT ACTIONS**

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

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

## Compliance Monitoring and Enforcement Program

requested by NERC concerning any penalty, sanction, or remedial actions imposed by the ReliabilityFirst.

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

### 5.1 Notification to Registered Entity of Alleged Violation

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

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

## Compliance Monitoring and Enforcement Program

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

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

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

### 5.2 Registered Entity Response

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

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

## Compliance Monitoring and Enforcement Program

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

### 5.3 Hearing Process for Compliance Hearings

ReliabilityFirst hearing process is set forth in **Attachment 2**.

### 5.4 Settlement Process

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

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

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

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

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

## Compliance Monitoring and Enforcement Program

ReliabilityFirst will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

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

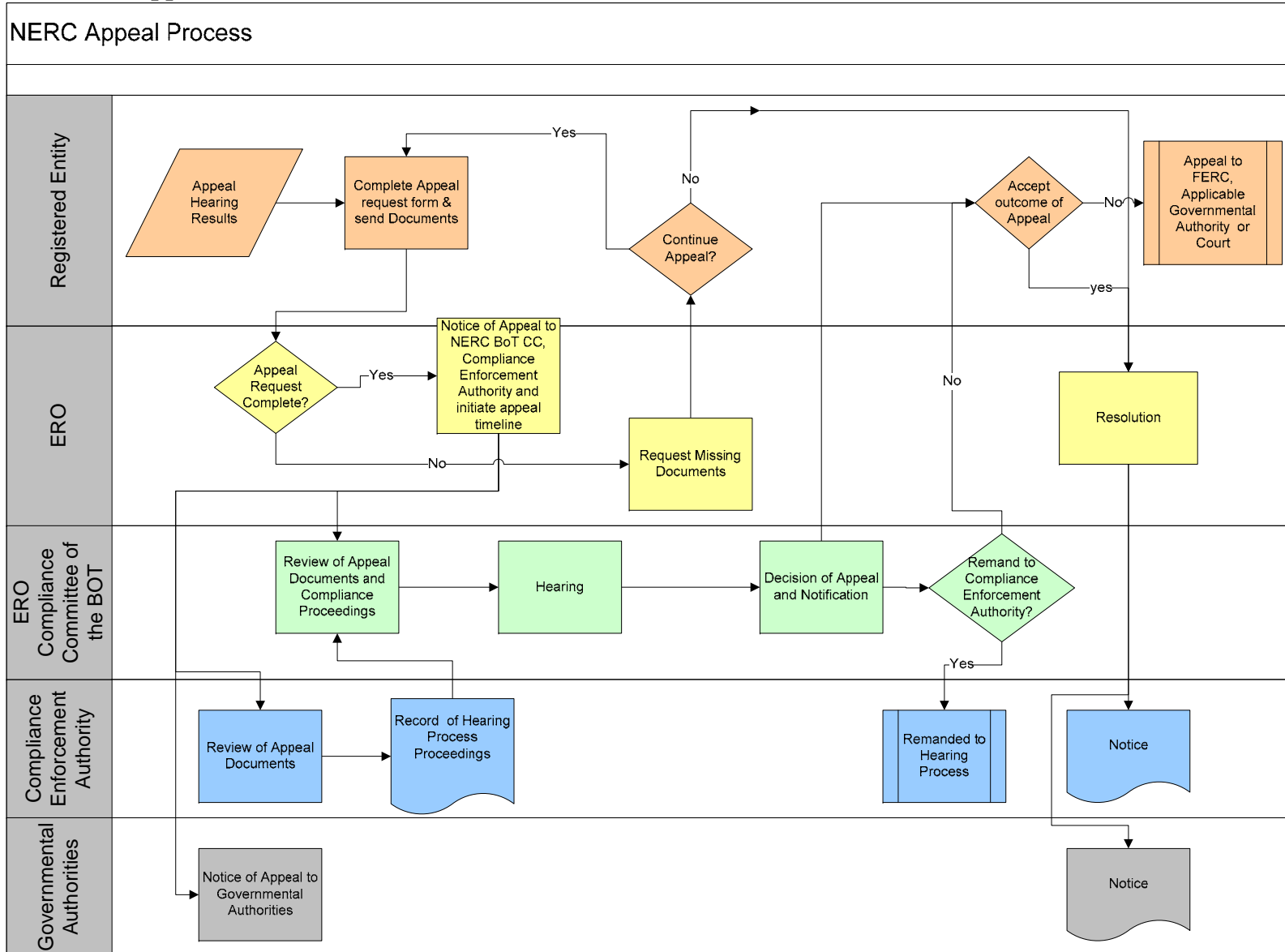
On appeal, NERC shall either affirm ReliabilityFirst's decision or remand to ReliabilityFirst with reasons for its remand, which may include a direction to ReliabilityFirst to revise the decision. If NERC directs ReliabilityFirst to revise its decision, the Registered Entity that was the subject of the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

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

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process



## **Compliance Monitoring and Enforcement Program**

### **5.6 Notice of Penalty**

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

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

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

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

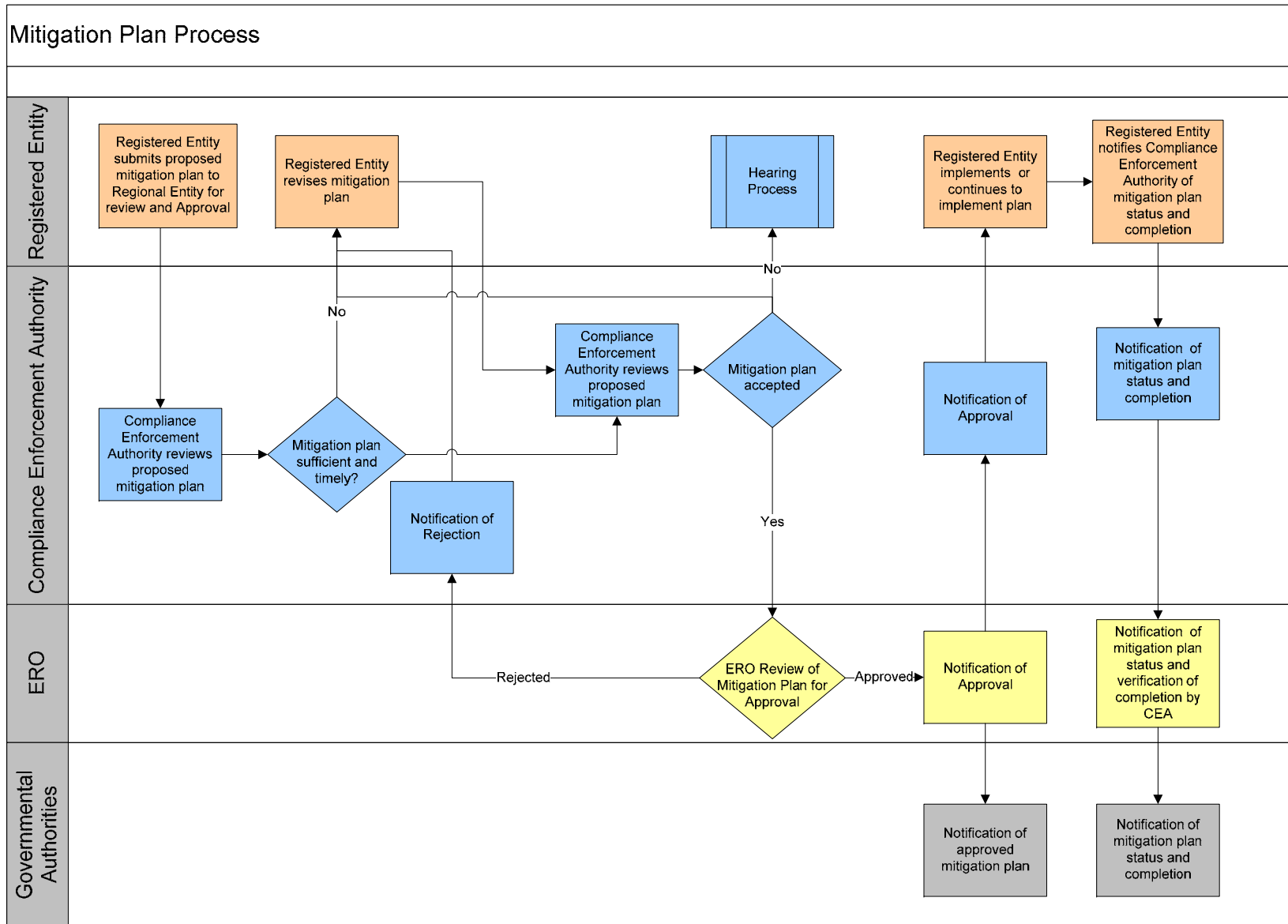
### **6.1 Requirement for Submission of Mitigation Plans**

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

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

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process





## **Compliance Monitoring and Enforcement Program**

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

A Mitigation Plan shall include the following information:

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

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

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

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

## **Compliance Monitoring and Enforcement Program**

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

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

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

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

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

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

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

## **Compliance Monitoring and Enforcement Program**

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

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

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

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

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

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by ReliabilityFirst. In addition,

## **Compliance Monitoring and Enforcement Program**

Reliability*First* may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

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

### **6.7 Recordkeeping**

Reliability*First* will maintain a record containing the following information for each Mitigation Plan:

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

### **7.0 REMEDIAL ACTION DIRECTIVES**

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

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

## Compliance Monitoring and Enforcement Program

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

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

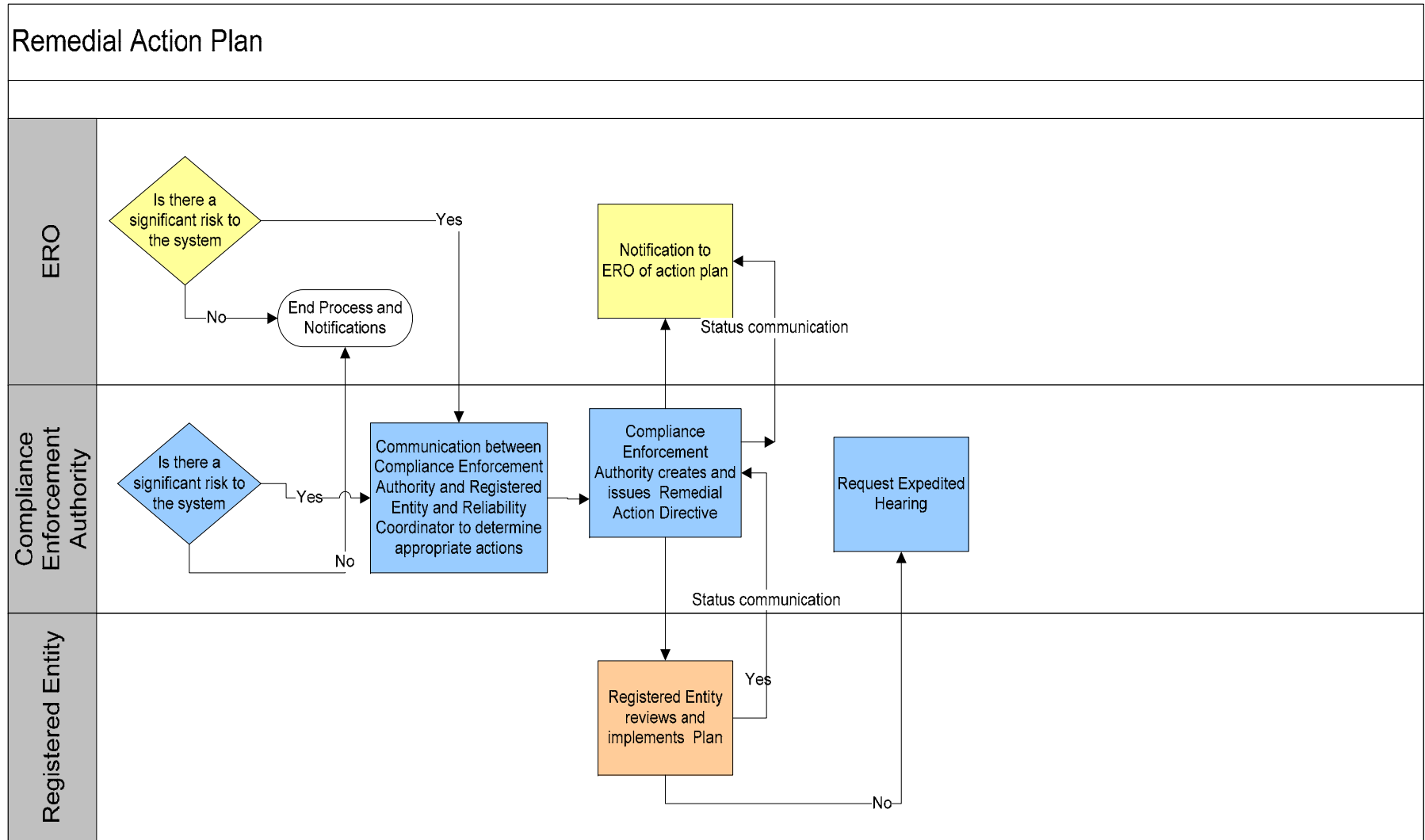
ReliabilityFirst will notify NERC within two (2) business days after issuing a Remedial Action Directive.

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

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

# Compliance Monitoring and Enforcement Program

Figure 7.0 – Remedial Action Process



## Compliance Monitoring and Enforcement Program

### 8.0 REPORTING AND DISCLOSURE

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

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

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

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

## **Compliance Monitoring and Enforcement Program**

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

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

## **9.0 DATA RETENTION AND CONFIDENTIALITY**

### **9.1 Records Management**

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

### **9.2 Retention Requirements**

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

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



## **Compliance Monitoring and Enforcement Program**

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

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

#### **9.3.1 Definitions**

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

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

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

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

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

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

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

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

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

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

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

A full Compliance Audit may be scheduled at this step.

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

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

# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2

### COMPLIANCE ENFORCEMENT AUTHORITY HEARING PROCEDURE

See the *ReliabilityFirst* Hearing Procedure for details on the implementation of the *ReliabilityFirst* hearing process. Subject to the authority of the hearing body to alter or extend any time periods or deadlines specified in the *ReliabilityFirst* Hearing Procedure and to hold such numbers of conferences and hearings as are necessary, it shall be the objective of the hearing process to complete the steps specified herein for formal compliance hearings within ninety (90) days following the issuance of written notice that the hearing body is convened.

Figure ATT-2 shows the hearing procedure steps.

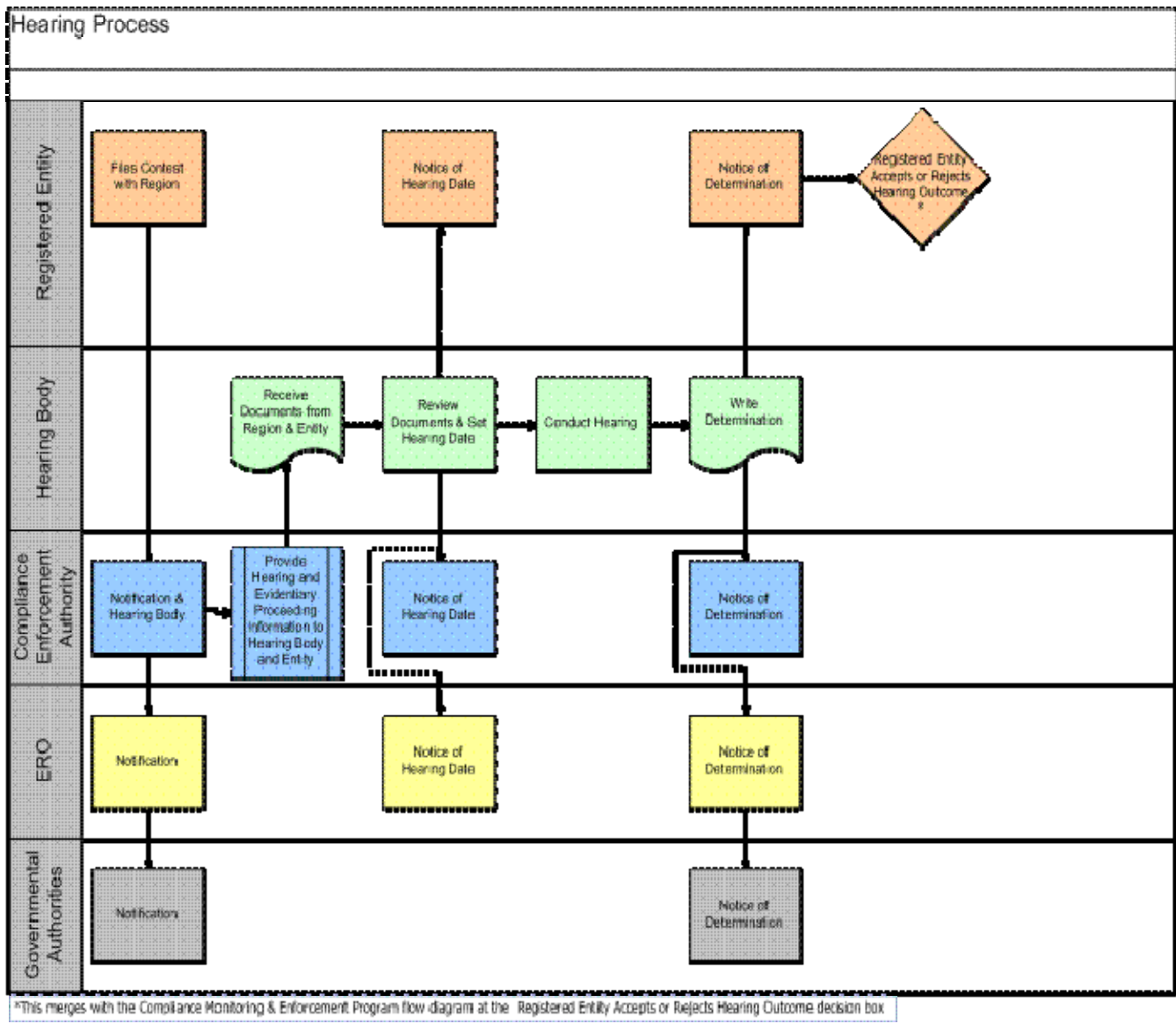


Figure ATT-2 –Hearing Procedure



**Marked for revisions for March 21  
FERC Order**

**Hearing**

**Procedure**

**Month, Date, 2008**

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## Hearing Procedure

### 1.0 HEARING PROCEDURES

#### 1.1 Applicability, Definitions and Interpretation

##### 1.1.1 Procedure Governed

The provisions set forth herein shall apply to and govern practice and procedure before ReliabilityFirst in hearings in the United States conducted into (i) whether Registered Entities within ReliabilityFirst's area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate mitigation plans as well as any remedial actions, penalties or sanctions in accordance with applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Body established by ReliabilityFirst. The composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Body on any matter brought before it for decision.

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

##### 1.1.2 Deviation

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

##### 1.1.3 Standards for Discretion

ReliabilityFirst's discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

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

## Hearing Procedure

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

### 1.1.4 Interpretation

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

### 1.1.5 Definitions

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

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

“Clerk,” as designated by ReliabilityFirst.

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

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

“Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and



## Hearing Procedure

communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

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

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

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3, the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System subject to FERC review.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means a composition of members of the ReliabilityFirst Compliance Committee as established by the Board of Directors of ReliabilityFirst as set out in the ReliabilityFirst Compliance Committee Charter. No two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body either before or after any recusals or disqualifications in accordance with Paragraph 1.4.5.

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

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be determined in accordance with the *Sanction Guidelines of the North American Electric Reliability Council* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).

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

“Mitigation Plan” means a plan to eliminate the violation of a Reliability Standard and its underlying causes.

“North American Electric Reliability Council” or “NERC” means North American Electric Reliability Corporation.

## Hearing Procedure

“Registered Entity” means each user, owner and operator of the Bulk-Power System within the United States that is required to register with ReliabilityFirst pursuant to 18 C.F.R. Section 39.2.

“ReliabilityFirst’s area of responsibility” means ReliabilityFirst’s corporate region.

“Reliable Operation” has the meaning set forth in the Federal Power Act, as it may be amended from time to time.

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

“Remedial Action Directive” means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.

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

“Hearing Procedure” means the procedure of ReliabilityFirst as set forth in this Paragraph 1.

“Staff” or “Compliance Staff” means individuals employed or contracted by ReliabilityFirst who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans. Staff members may participate and be represented by counsel in ReliabilityFirst proceedings, and shall have the rights and duties of any Participant. Staff members must satisfy ReliabilityFirst’s conflict of interest policy.

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

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

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

All filings made with ReliabilityFirst must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;

## Hearing Procedure

- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record if available; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

### 1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### 1.2.3 Submission of Documents

- a) Where to File

Filings shall be made with the Clerk of Reliability*First* located at the principal office of Reliability*First*. The office will be open during Reliability*First*'s regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by Reliability*First*.

- b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Body. Filings will be considered made when they are date stamped received by the Clerk. To be

## Hearing Procedure

timely, filings must be received no later than close of business at *ReliabilityFirst* on the date specified.

### c) How to File

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made.

Alternatively, filing by electronic means will be acceptable upon implementation of an electronic filing system by *ReliabilityFirst*.

### d) Number of Copies to File

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

### e) Signature

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

### f) Verification

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

### g) Certificate of Service

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

## 1.2.4 Service

### a) Service List

## Hearing Procedure

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

b) By Participants

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

c) By the Clerk

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

d) Effective Date of Service

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

### 1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which

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the Office of Reliability *First* is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the Office of Reliability *First* is closed.

### **1.2.6 Extensions of Time**

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

### **1.2.7 Amendments**

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

### **1.2.8 Transcripts**

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

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

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

Any action taken by the Hearing Officer or the Hearing Body shall be recorded in a Ruling, Notice, Order or other applicable issuance, such as a transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Body. All notices of hearings shall set forth the date, time and place of hearing.

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

All hearings, oral arguments and conferences shall be held at the principal office of Reliability *First* unless the Hearing Officer or Hearing Body elects a different location.

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### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6.

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

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

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

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

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a Notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Regional Entities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "RFC", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

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

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### 1.3 Initiation of the Hearing Process

#### 1.3.1 Registered Entity's Option to Request a Hearing

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

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

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity's proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity requests the shortened hearing procedure, Compliance Staff shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff agrees to use the shortened hearing procedure. If Staff makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

- a) The Registered Entity's self-report of a violation;
- b) The Notice of Alleged Violation and the Registered Entity's Response thereto; and/or



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- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement rejected the proposed revised Mitigation Plan.

### 1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) days after the date on which the Notice of Hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the Prehearing Conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within five (5) days after the date on which the Notice of Hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days of the Prehearing Conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all documents that Staff seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:
  - 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Registered Entity seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.

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- e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days of the Staff's reply comments filing pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days of the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "Brief on Exceptions" in accordance with Paragraph 1.7.5. No replies to Briefs on Exceptions shall be allowed.
- h) The Hearing Body shall strive, but is not required, to issue a Final Order within ninety (90) days of the Notice of Hearing.

The Hearing Officer or Hearing Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the Final Order within ninety (90) days of the Notice of Hearing.

### 1.4 General Hearing Procedure

#### 1.4.1 Notice of Hearing

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

#### 1.4.2 Hearing Officer

ReliabilityFirst may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Body as set forth in Paragraph 1.4.3. The Hearing Body reserves its right to attend any aspect of the hearing as a body or by individual members.

The Hearing Body may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for submission of the matter to the Hearing Body for final decision through the presentation to the

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Hearing Body of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, suspend or adjourn a hearing;
- 3) To separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) To modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;
- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;
- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue initial opinions; and
- 11) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 Hearing Body**

The Hearing Body is vested with the authority to issue an order resolving the issue(s) in all cases. To that end:

- 1) The Hearing Body shall be entitled to receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.

## Hearing Procedure

- 2) The Hearing Body or any individual member thereof shall be entitled, but not required, to attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The Hearing Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a Final Order.
- 4) The Hearing Body or any individual member thereof shall be entitled to offer upon its own motion information or documents, including books, papers, logs, graphs, maps, drawings, charts or any other written material, for submission into the evidentiary record at any time until the issuance of a Final Order; provided that the Participants shall be provided an opportunity to object to the motion seeking introduction of such information or documents into the evidentiary record, and to present testimony and other evidence in relation to such information or documents. The Hearing Body and individual members thereof shall strive to submit any such information or documents, upon motion, in a timely manner to avoid any undue delay in the hearing process. Participants shall file objections, if any, to a motion by the Hearing Body within 14 days after service of the motion. Participant objections shall clearly state the basis for the objection and may identify any evidence it seeks to introduce in response to the information or documents offered by the Hearing Body. If the Hearing Body denies the Participant's objections, or denies admission of any evidence submitted by the participant in relation to the information or documents introduced by the hearing body, the basis for the denial shall be explained in the Hearing Body's Final Order.
- 5) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it shall be entitled, on its own motion or upon petition for interlocutory review meeting the requirements of Paragraph 1.4.4, to reverse or modify the issuance or ruling in whole or in part, or to take any other action as may be appropriate.
- 6) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a Final Order. In issuing a Final Order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

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### 1.4.4 Interlocutory Review

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

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

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

### 1.4.5 Disqualification

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

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

## **Hearing Procedure**

Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the ReliabilityFirst Compliance Committee shall appoint a new member(s) from among the ReliabilityFirst Board of Directors to the Hearing Body to create a quorum, which new member(s) shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter. The ReliabilityFirst Compliance Committee shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Body shall be subject to the provisions applicable herein to all Hearing Body members.

### **1.4.6 Technical Advisor**

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

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

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

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the Hearing Body, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; but
  - 2) the Hearing Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:

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- A) in writing if the writing is simultaneously provided to all Participants; or
  - B) orally if a representative for every Participant is present in person or by telephone;
  - C) subject to the requirement that the substance of ruling on such issue be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling have the opportunity to state its objection on the record.
- b) This proscription does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof, provided that any member of the Compliance Staff involved in such communication may not be and may not subsequently serve as a Technical Advisor.
  - c) This proscription also does not prohibit communications between members of the Hearing Body, the Hearing Officer and any Technical Advisor.
  - d) Any member of the Hearing Body, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a Notice of Ex Parte Communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

### 1.4.8 Appearances

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

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

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

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

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

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

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such defaulting Participant. Any hearing costs incurred as a failure to appear may be assessed against such Participant.

Participants shall exercise diligence and timeliness in all actions before the Hearing Officer and the Hearing Body and in all other actions related to these Hearing Procedures. The failure of any Participant to exercise diligence or timeliness in any such actions, as determined by the Hearing Officer or Hearing Body, will be noted in the record and the Hearing Officer or Hearing Body may take such action as to promote the accomplishment of the goals of these Procedures outlined in Paragraph 1.1.3.

### **1.4.10 Consolidation of Proceedings**

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

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

## **1.5 Prehearing Procedure**

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

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### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

- 1) Preliminarily identify the issues;



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

### 1.5.3 Summary Disposition

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

### 1.5.4 Status Hearings

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

### 1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate, including suspension of the procedural schedule to pursue settlement negotiations as set forth in ReliabilityFirst's Settlement Procedures, which are publicly available on the ReliabilityFirst website at [www.rfirst.org](http://www.rfirst.org). Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses;

## Hearing Procedure

however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay a hearing proceeding. When the Hearing Officer grants a motion to dismiss a proceeding in whole or in part, the ruling shall set forth the rationale for the grant and shall be considered an initial opinion.

### 1.5.6 Experts

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

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

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

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

- (A) requests for information to the Respondent;
- (B) every written request, including e-mail, directed to persons not employed by ReliabilityFirst to provide documents or to be interviewed;
- (C) the documents provided in response to any such requests described in (A) and (B) above;
- (D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;
- (E) all other documents obtained from the Respondent; and
- (F) all other documents obtained from persons not employed by ReliabilityFirst.

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

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(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Body shall oversee the Staff's designation of documents to be produced to each Participant and the development, execution and enforcement of any protective order deemed necessary.

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

(4) Nothing in subparagraph (a)(1) shall limit the discretion of ReliabilityFirst to make available any other document or the authority of the Hearing Officer to order the production of any other document.

### b) Documents That May Be Withheld

(1) Staff may withhold a document if:

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

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

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

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

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

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

c) **Withheld Document List**

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

d) **Timing of Inspection and Copying**

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

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

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

(f) **Copying Costs**

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

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

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

### **1.5.8 Other Discovery Procedures**

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

- (a) The provisions of Subparagraphs (b) through (g) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §384.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the Hearing Body do not have the authority to issue subpoenas to, or otherwise order or compel the appearance by or production of documents or information by, any person or entity that is not a Participant.
- (d) References to the “Commission” in Rules 402 through 408 and 410 shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b) and the second reference in Rule 410(d) shall be deemed to be to the “Hearing Body”, and (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff.

## Hearing Procedure

- (e) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, or request for admissions, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request.
- (f) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- (g) Notwithstanding (e) and (f), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

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

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

Unless the Hearing Officer orders otherwise and with the exception of any adverse Participant examination pursuant to Paragraph 1.6.16, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and will be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. This requirement does not preclude a Participant from using a document or other demonstrative evidence if grounds exist for such use in the conduct of proper cross-examination even if the Participant did not file the document in advance of the evidentiary hearing.

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

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

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

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

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

### 1.5.10 Protective Orders

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

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- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
- e) The protective order shall identify the data, information or studies that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall close the hearing while the information is addressed to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

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

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

## **1.6 Evidentiary Hearing Procedure**

### **1.6.1 Evidentiary Hearings**

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

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

In all proceedings, Compliance Staff shall open and close.

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



## **Hearing Procedure**

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

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

A Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### **1.6.5 Exhibits**

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

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

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

### **1.6.7 Admission of Evidence**

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise. All testimony is to be under oath or affirmation.

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

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

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

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

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

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

### **1.6.9 Stipulation**

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

### **1.6.10 Official Notice**

The Hearing Officer may take official notice of any of the following:

- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of regional reliability entities other than ReliabilityFirst.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed ReliabilityFirst proceedings.
- 3) State and Federal statutes and municipal and local ordinances.

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- 4) The decisions of State and Federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of Reliability *First*.
- 6) All other matters of which the courts of the United States may take judicial notice.

An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit unless waived by the Participants and approved by the Hearing Officer. Any scientific or technical fact, or other information not in document form, of which notice is taken shall be set forth in a statement on the record. The Hearing Officer will afford any Participant making a timely request an opportunity to show the contrary to the matter officially noticed.

### 1.6.11 Admissibility of Evidence

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

Generally recognized rules of evidence shall not apply. Rather, the Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. However, the Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

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

### 1.6.12 Offer of Proof

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

### 1.6.13 Reservation of Evidentiary Ruling

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

### 1.6.14 Cross-Examination

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' cross-examination, and prior to the

## **Hearing Procedure**

witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

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

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

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

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

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

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

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, and the number and complexity of the issues.

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- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### 1.7.2 Other Pleadings

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

### 1.7.3 Draft Opinions

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

### 1.7.4 Hearing Officer's Initial Opinion

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

### 1.7.5 Exceptions

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "Brief on Exceptions" and, within fourteen (14) days after the time for filing "Briefs on Exceptions" or such other time as is set by the Hearing Officer, any Participant may file as a reply, "Brief in Reply to Exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error of fact or law asserted, and include a concise discussion of any policy considerations applicable

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and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed:

- 1) together in one brief; or
  - 2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
  - d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
  - e) Statements of fact should be supported by citation to the record.
  - f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions.
  - g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### 1.7.6 Oral Argument

The Hearing Body may elect to hear oral argument. If oral argument is held without initial briefs, Participants will be given the opportunity to present argument on all issues. If oral argument is held in addition to initial briefs, argument may be limited to issues identified by the Hearing Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

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

### 1.7.7 Additional Hearings

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After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Body's own motion if there is reason to believe that reopening is warranted by any changes in conditions of fact or law, or by the public interest. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes of fact or of law, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### **1.7.8 Hearing Body Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its Final Order. Issuance of a Final Order shall require (i) a quorum of the hearing Body, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Body shall strive, but shall not be required, to issue its Final Order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The Final Order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Final Order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. If the Final Order imposes a Penalty, it shall be entitled Final Order and Notice of Penalty. The Final Order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.10. The Hearing Body shall direct the Clerk to serve the Final Order on the Participants. The service of the Final Order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### **1.7.9 The Record**

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

- 1) Notice of Alleged Violation and Registered Entity's Response thereto;
- 2) Registered Entity's Proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- 3) Registered Entity's request for a hearing;
- 4) Participant filings, motions, and responses;
- 5) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- 6) Transcripts;

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- 7) Evidence received;
- 8) Matters officially noticed;
- 9) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 10) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 11) Post-hearing pleadings other than briefs;
- 12) The Hearing Officer's initial opinion;
- 13) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 14) The Hearing Body's Final Order and any Notice of Penalty therewith;
- 15) All Notices of Ex Parte Communications;
- 16) Written comments submitted in lieu of written testimony;
- 17) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer of Technical Advisor and any responses or replies thereto; and
- 19) All Settlement Agreements and supporting Explanatory Statements, and Initial Opinions and Final Orders on Settlement Agreements.

### **1.7.10 Appeal**

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

## **1.8 Settlement**

Settlements may be entered into at any time pursuant to ReliabilityFirst's Settlement Procedures, which are publicly available on the ReliabilityFirst web-site at [www.rfirst.org](http://www.rfirst.org).

## **1.9 Remedial Action Directives**

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

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC



## Hearing Procedure

Compliance Monitoring and Enforcement Program. ReliabilityFirst will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

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

The Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.9.2(a).

### 1.9.2 Remedial Action Directive Hearing Procedure

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

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

- a) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants shall not file any briefs or draft opinions, and oral argument shall not be held.

## Hearing Procedure

- f) The Hearing Body shall issue a summary written decision within ten (10) days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.

## Exhibit E — Funding

### 1. Scope of activities funded through the ERO funding mechanism

ReliabilityFirst shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

### 2. Allocation of Costs

ReliabilityFirst shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement. ReliabilityFirst shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate ReliabilityFirst's dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

### 3. Collection of Funding

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

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

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

### 4. Application of Penalties

All penalty monies received by ReliabilityFirst, other than penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this

Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of *ReliabilityFirst* shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### 5. Budget and Funding for *ReliabilityFirst*'s Non-Statutory Activities

In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such functions and activities referred to in this Section 5 as "statutory activities"), *ReliabilityFirst* performs the following other functions and activities (such other functions and activities being referred to in this Section 5 as "non-statutory activities"): **None**.

*ReliabilityFirst* shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions: **Not applicable**.

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

**ATTACHMENT 7B**  
**REDLINED VERSION**  
**CORRECTED 8-28-2008**

**AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND RELIABILITYFIRST CORPORATION**

AMENDED AND RESTATED DELEGATION AGREEMENT (“Agreement”) made this 5th day of April 2008 20XX, between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the ReliabilityFirst Corporation (ReliabilityFirst), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and ReliabilityFirst may be individually referred to herein as “Party” or collectively as “Parties.”

**WITNESSETH**

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

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

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

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

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

(A) The Regional Entity is governed by —

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reliability*First* Rules means the bylaws, a rule of procedure or other organizational rule or protocol of Reliability*First*.

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



## 2. Representations.

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

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

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

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

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

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

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

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

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

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

### 3. Covenants.

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

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

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

### 4. Delegation of Authority.

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

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

**5. Reliability Standards.**

- (a) In connection with its Delegated Authority, ReliabilityFirst shall be entitled to:
- (i) propose Reliability Standards or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords ReliabilityFirst reasonable notice and opportunity to be heard; and
  - (ii) develop Regional Reliability Standards through ReliabilityFirst's process as set forth in **Exhibit C**. Proposals approved through ReliabilityFirst's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. ReliabilityFirst may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

**6. Enforcement.**

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

(b) ReliabilityFirst shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and ReliabilityFirst shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

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

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

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

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

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

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review ReliabilityFirst's compliance enforcement program to ensure that: (i) the program

meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

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

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

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

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

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

(b) ReliabilityFirst and NERC agree that costs of carrying out ReliabilityFirst's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is ~~expressly provided~~proposed by

ReliabilityFirst and approved by NERC and the Commission. If ReliabilityFirst proposes to use a formula other than net energy for load beginning in the following year, ReliabilityFirst shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and ReliabilityFirst to the Commission pursuant to 18 C.F.R. §39.4, as set forth in Exhibit E; for such year;

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

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

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

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

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

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

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

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

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

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

**10. Default and Cure.** Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the “Default Notice”). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

**11. Term and Termination.**

(a) This Agreement shall become effective ~~April 5, 2008, pursuant to thirty (30) days after the March 21, 2008 order date of the Federal Energy Regulatory issuance of a final Commission (122 FERC 61,245) order approving this Agreement without requiring any changes to this Agreement unacceptable to either Party.~~

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



transition has been effected, unless the transition period exceeds one year, at which time ReliabilityFirst may unilaterally terminate.

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

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

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

indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

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

**14. Confidentiality.** During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

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

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

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

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

If to NERC:

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

If to Reliability*First*:

Reliability*First* Corporation  
320 Springside Drive  
Suite 300  
Akron, OH 44333  
Attn: Timothy R. Gallagher  
Facsimile: (330) 456-3648

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

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

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

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

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

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

NORTH AMERICAN  
ELECTRIC RELIABILITY CORPORATION

RELIABILITYFIRST  
CORPORATION

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

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

Name: David A. Whitely\_\_\_\_\_

Name: Timothy R. Gallagher\_\_\_\_\_

Title: Executive Vice President\_\_\_\_\_

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

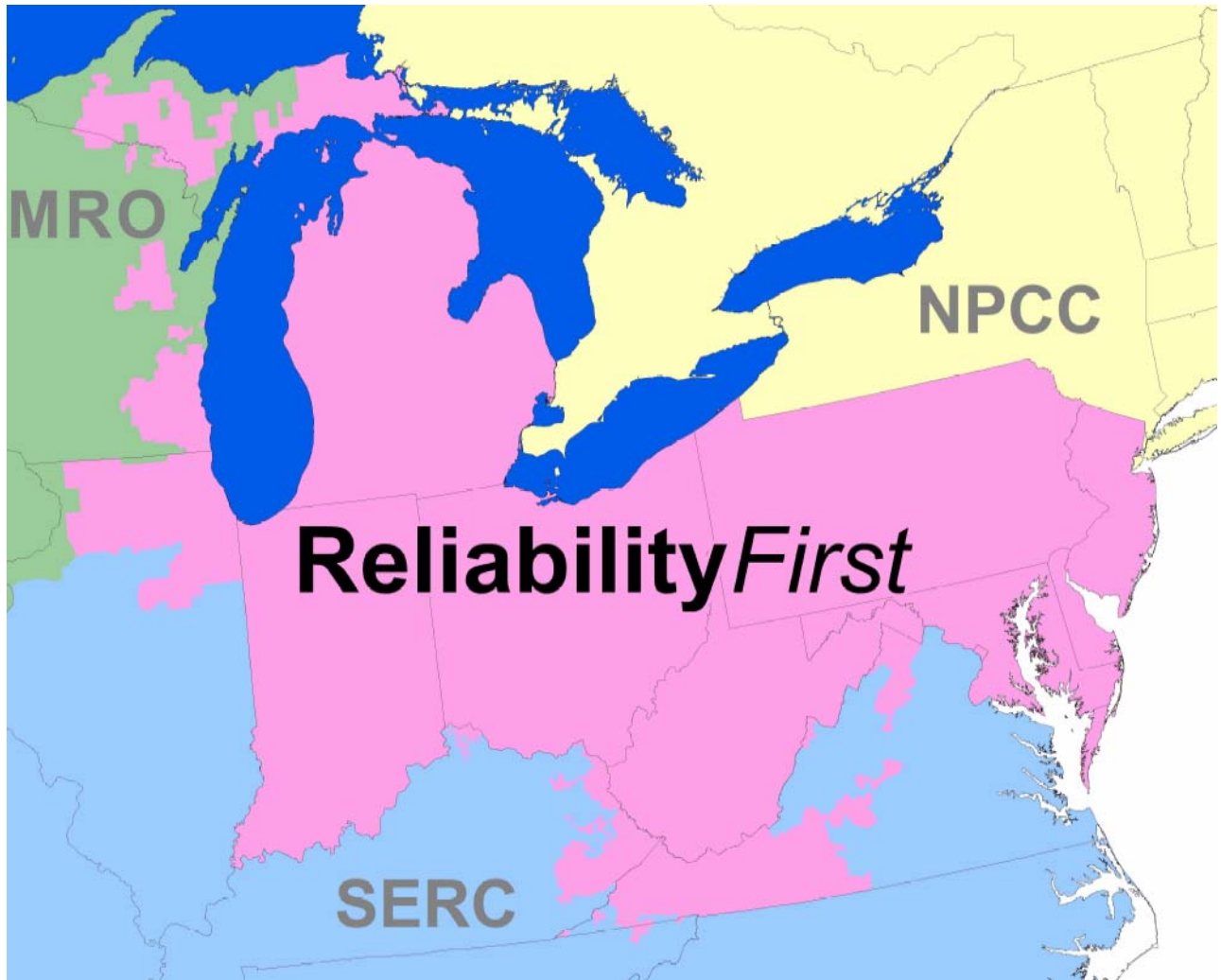
Date: March 28, 2008\_\_\_\_\_ Date: March 28, 2008

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

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

## Exhibit A - Boundaries of Delegation Agreement

The Boundaries of **ReliabilityFirst** Corporation (**ReliabilityFirst**) are defined by the service territories of Load Serving Entities (LSEs) and include all of New Jersey, Delaware, Pennsylvania, Maryland, District of Columbia, West Virginia, Ohio, Indiana, Lower Michigan and portions of Upper Michigan, Wisconsin, Illinois, Kentucky, Tennessee and Virginia as shown on the map below. In addition, transmission systems and generation within the metered boundaries of the LSEs are within **ReliabilityFirst** even if outside the respective service territories shown. The area is electrically contiguous.



Boundaries effective January 1, 2007

## Exhibit B – Governance

Exhibit B shall set forth the Regional Entity’s bylaws and portions of the Standards Development Process as set out in Exhibit C, which NERC agrees demonstrate that the Regional Entity meets the following criteria ~~or~~:

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

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

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

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

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





## AMENDED AND RESTATED BYLAWS

OF

### **Reliability*First* Corporation**

a Delaware nonprofit corporation

[Adopted December 19, 2006](#)

[Amended September 21, 2007<sup>1</sup>](#)

[Amended May 22, 2008<sup>2</sup>](#)

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<sup>1</sup> [Section 5.9.2](#)

<sup>2</sup> [Sections 1.12, 7.13, 7.14](#)

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**AMENDED AND RESTATED  
BYLAWS OF  
ReliabilityFirst Corporation  
a Delaware nonprofit corporation  
(the “Corporation”)**

~~[As approved by the Board of Directors on October 10, 2006 and November 10, 2006  
and adopted by the Members on December 19, 2006 –  
Section 5.9.2 as amended by Board of Directors on September 25, 2007]~~

[As adopted by the Members on December 19, 2006,  
amended by the Board of Directors on September 21, 2007,  
and amended by the Board of Directors on May 22, 2008]

ARTICLE I.  
DEFINITIONS

Section 1.1. Act. “Act” shall mean Section 215 of the Federal Power Act (16 U.S.C. §824n).

Section 1.2. Adjunct Member. “Adjunct Member” shall mean any entity that does not qualify to join an Industry Sector but has been approved for membership by the Board. Adjunct Members may include Regulatory Participants.

Section 1.3. Affiliate. “Affiliate” shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity, as determined in the sole discretion of the Board of the Corporation. For this purpose, “control” may be presumed by the direct or indirect ownership of ten percent (10%) or more of the outstanding voting capital stock or other equity interests having ordinary voting power.

Section 1.4. Associate Member. “Associate Member” shall mean any entity that has joined an Industry Sector and is an Affiliate or Related Party of a Regular Member.

Section 1.5. Board. “Board” shall mean the Board of Directors of the Corporation.

Section 1.6. Bulk Power System. “Bulk Power System” shall mean facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and electric energy from generation facilities needed to maintain transmission system reliability, but does not include facilities used in the local distribution of electricity.

Section 1.7. Certificate of Incorporation. “Certificate of Incorporation” shall mean the Certificate of Incorporation of the Corporation filed with the Delaware Secretary of State, as from time to time amended.

Section 1.8. Commission. “Commission” shall mean the Federal Energy Regulatory Commission.

Section 1.9. Delegation Agreement. “Delegation Agreement” shall mean the delegation agreement, as supplemented or amended from time to time, between NERC and the Corporation pursuant to which NERC has delegated its authority to the Corporation to propose and enforce Reliability Standards within the Region.

Section 1.10. Electronic Transmission. “Electronic transmission” shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 1.11. ERO. “ERO” shall mean the electric reliability organization established under the Act to enforce Reliability Standards applicable to all owners, operators and users of the Bulk Power System in North America.

Section 1.12. Hearing Body. “Hearing Body” shall mean a group established with authority to conduct and render decisions in a formal compliance hearing of an entity registered in the NERC compliance registry who is the subject of a notice of alleged violation, proposed penalty or sanction, contested mitigation plan or contested remedial action directive.

~~Section 1.12.~~ Section 1.13. Industry Sector. “Industry Sector” shall mean a group of Bulk Power System owners, operators or users in the Region with substantially similar interests as pertinent to the purposes and operations of the Corporation of the Bulk Power System. The Industry Sectors shall consist of the following: (1) Suppliers, (2) Transmission Companies, (3) RTOs, (4) Small LSEs, (5) Medium LSEs, and (6) Large LSEs.

~~Section 1.13.~~ Section 1.14. Large LSEs. “Large LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 50,000 GWh or greater.

~~Section 1.14.~~ Section 1.15. Medium LSEs. “Medium LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region between 10,000 GWh and 50,000 GWh.

~~Section 1.15.~~ Section 1.16. Members. “Members” shall mean Regular Members, Associate Members and Adjunct Members.

~~Section 1.16.~~ Section 1.17. NERC. “NERC” shall mean the North American Electric Reliability Corporation, or any successor entity, which has been certified by the Commission as the ERO pursuant to the Act to establish and enforce Reliability Standards for the Bulk Power System.

~~Section 1.17.~~ Section 1.18. NERC Rules. “NERC Rules” shall mean the NERC Rules of Procedure as approved by the Commission.

~~Section 1.18.~~Section 1.19. Net Energy for Load. “Net Energy for Load” shall mean net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses, but excludes energy required for storage of energy at energy storage facilities. Calculations of net energy for load for all purposes under these Bylaws shall be based on the most recent calendar year for which data on net energy for load of the Region is available.

~~Section 1.19.~~Section 1.20. Person. “Person” shall mean a natural person, corporation, cooperative, partnership, association, or other private or public entity.

~~Section 1.20.~~Section 1.21. Region. “Region” shall mean the geographic boundaries of the Corporation described in the Delegation Agreement.

~~Section 1.21.~~Section 1.22. Regional Entity. “Regional Entity” shall mean any entity with which NERC has entered into a delegation agreement to delegate, or which the Commission or a governmental authority in Canada or Mexico has directly assigned, enforcement authority for reliability standards for the Bulk Power System in a defined geographic area of North America.

~~Section 1.22.~~Section 1.23. Regional Variance. “Regional Variance” shall mean an aspect of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities. A Regional Variance may be used to qualify how a particular Regional Entity or Regional Entities achieves the objectives of a Reliability Standard or may establish different measures or performance criteria as necessary to achieve reliability within the particular Regional Entity or group of Regional Entities. A Regional Variance may not be inconsistent with any Reliability Standard as it would otherwise exist without the Regional Variance. Such a Regional Variance may be proposed by a Regional Entity and, if adopted by NERC and approved by the Commission, shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authority.

~~Section 1.23.~~Section 1.24. Regional Reliability Standard. “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

~~Section 1.24.~~Section 1.25. Regular Member. “Regular Member” shall mean any entity that has joined an Industry Sector that either (i) has no Affiliates or Related Parties that are Members or (ii) is the entity designated to be the Regular Member by any related group of Associate Members.

~~Section 1.25.~~Section 1.26. Regulatory Participant. “Regulatory Participant” shall mean any state, District of Columbia or any provincial regulatory agency in the Region exercising authority over the rates, terms or conditions of electric

service of an entity other than itself within the Region, or the planning, siting, construction or operation of electric facilities of an entity other than itself within the Region, as well as the Commission, regional advisory bodies that may be established by the Commission, or any federal regulator or agency or any entity authorized by any state, the District of Columbia or any province to represent utility consumers.

~~Section 1.26.~~Section 1.27. Related Party. “Related Party” shall mean, solely for purposes of the governance provisions of these Bylaws, any entity that is either (i) a generation and transmission cooperative or one of its distribution cooperative members; and (ii) a joint municipal agency or one of its members. For purposes of these Bylaws, a representative of a state or federal government agency shall not be deemed a Related Party with respect to each other, and a public body’s regulatory authority, if any, over a Member shall not be deemed to make it a Related Party with respect to that Member.

~~Section 1.27.~~Section 1.28. Reliability Coordinator. “Reliability Coordinator” shall mean any entity that is recognized as a reliability coordinator by NERC in the Region that does not otherwise qualify as a Transmission Company or RTO.

~~Section 1.28.~~Section 1.29. Reliability Standard. “Reliability Standard” shall mean a requirement to provide for Reliable Operation of the Bulk Power System, including, without limitation, the foregoing requirements for the operation of existing Bulk Power System facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the Bulk Power System, but shall not include any requirement to enlarge Bulk Power System facilities or to construct new transmission capacity or generation capacity.

~~Section 1.29.~~Section 1.30. Reliable Operation. “Reliable Operation” shall mean operating the elements of the Bulk Power System within equipment and electric system thermal, voltage and stability limits so that instability, uncontrolled separation, or cascading failure of the Bulk Power System will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

~~Section 1.30.~~Section 1.31. RTOs. “RTOs” shall mean PJM Interconnection L.L.C. and Midwest Independent Transmission System Operator, Inc., or such other entity that has been recognized by the Commission as a regional transmission operator or recognized functional equivalent in the Region.

~~Section 1.31.~~Section 1.32. Small LSEs. “Small LSEs” shall mean (i) owners or operators of entities (or their representatives) that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 10,000 GWh or less, and (ii) end-use customers interconnected with the Bulk Power System with load of at least 100 MW at one location in the Region.

~~Section 1.32.~~Section 1.33. Suppliers. “Suppliers” means owners or operators of electric generation connected to the transmission system and wholesale power marketers in the Region.

~~Section 1.33.~~ Section 1.34. Transmission Companies. “Transmission companies” means (i) owners (or those with ownership entitlement), planners and operators of transmission facilities included in the Bulk Power System in the Region and (ii) Reliability Coordinators.

## ARTICLE II. PURPOSE AND ACTIVITIES

Section 2.1. Purpose. The business or purposes to be conducted or promoted by the Corporation are:

- (a) to be a Regional Entity and exercise enforcement authority for Reliability Standards for the Bulk Power System in the Region pursuant to the Delegation Agreement;
- (b) to carry out certain of NERC’s activities that are in furtherance of NERC’s responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules or the Delegation Agreement; and
- (c) to engage in any other lawful act or activity for which not for profit corporations may be organized under the Delaware General Corporation Law.

The Corporation shall be exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended (hereinafter the “Code”) as an organization described in Section 501(c)(6) of the Code. The Corporation shall not engage directly or indirectly in any activity which would invalidate its status as an organization exempt from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(6) of the Code. No part of the net income to the Corporation shall inure to the benefit of or be distributed to its directors, officers, members or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered.

Section 2.2. Activities. In support and furtherance of its purpose, and in accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation’s responsibilities shall include, but not be limited to, the following:

- (a) Reliability Standards. The Corporation shall:
  - (1) propose Reliability Standards, Regional Variances or modifications thereof to NERC; and
  - (2) develop Regional Reliability Standards through the Corporation’s standards development procedure.

(b) Enforcement. The Corporation shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the Region through the Corporation's compliance enforcement program.

(c) Delegation-Related Services. The Corporation, on behalf of NERC, shall carry out certain of NERC's activities that are in furtherance of NERC's responsibilities as the ERO under the Act or in support of delegated functions, including:

- (1) Organization registration and certification.
- (2) Reliability readiness audit and improvement.
- (3) Reliability assessment and performance analysis.
- (4) Training and education.
- (5) Situational awareness and infrastructure security.

(d) Budget. The Corporation shall prepare and submit a budget to NERC for the amount of costs the Corporation will incur in support of delegated functions that are in furtherance of NERC's responsibilities as the ERO under the Act.

(e) Non-delegated Functions. The Corporation may conduct such other activities for or on behalf of the Members that are not delegated to the Corporation by NERC under the Delegation Agreement if authorized by the Board and not inconsistent with the Act, NERC Rules, the Delegation Agreement or these Bylaws.

Section 2.3. Not-for-Profit Corporation. The Corporation is operated as a Delaware non-stock nonprofit corporation and is organized pursuant to the general corporation law of the State of Delaware.

### ARTICLE III. POWERS

Section 3.1. Powers. The Corporation shall have the power to engage in any lawful act or activity for which corporations may be organized under the general corporation law of the State of Delaware, subject to any limitations provided in applicable federal, provincial or state law or in the Certificate of Incorporation or these Bylaws.

### ARTICLE IV. OFFICES

Section 4.1. Principal Office. The principal office of the Corporation shall be located initially within the Region, at such location as the Board may from time to time determine, giving consideration to the total cost to the Corporation and convenience of

travel for staff, Members and Regulatory Participants. Once established, the principal office may remain in its location, even if outside the Region.

## ARTICLE V. MEMBERS

Section 5.1. General. The terms and conditions of membership in the Corporation shall be as provided in the Certificate of Incorporation and these Bylaws if not inconsistent therewith. All Regular Members and Associate Members shall be required to join a single Industry Sector.

Section 5.2. Classes of Members. The Corporation shall have three (3) classes of Members: Regular Members, Associate Members and Adjunct Members.

5.2.1 Regular Members. Except as set forth in Section 7.4 of these Bylaws, Regular Members shall have the right to vote on all matters within their Industry Sector. Regular Members shall have all the rights and obligations of being a Member in the Corporation.

5.2.2 Associate Members. Associate Members shall not be entitled to vote within their Industry Sector or for any other purpose as a Member. Associate Members shall otherwise have all the rights and obligations of being a Member in the Corporation.

5.2.3 Adjunct Members. Adjunct Members shall not be entitled to vote for any purpose as a Member. Adjunct Members shall otherwise have all the rights of being a Member in the Corporation.

Section 5.3. Qualifications of Members. Any entity eligible to join an Industry Sector may be a Regular Member or Associate Member of the Corporation. Any entity not eligible to join an Industry Sector may be an Adjunct Member of the Corporation.

Section 5.4. Admission of Members. New Members may join the Corporation upon submittal of an application, in a form approved by the Board, and upon payment of such fees or charges, if any, as may be established by the Board or required by NERC. Each Regular Member and Associate Member shall designate the Industry Sector it wishes to join. A Regular Member and Associate Member may change its Industry Sector designation once each calendar year upon notice to the Corporation. Such notice must be provided to the Secretary of the Corporation at least sixty (60) days before an annual or other meeting of Members if the change is to be effective for such meeting. The President shall review a membership application and may request demonstration by the applicant that it qualifies for membership in a particular Industry Sector. Any dispute with respect to a Regular Member's or Associate Member's qualifications for a particular Industry Sector shall be resolved by the Board. The President shall have authority to approve an application for membership, subject to review by the Board.

Section 5.5. Voting Rights. Each Regular Member in good standing shall be entitled to one vote in the Industry Sector in which it belongs on all matters submitted to a vote of Members. The Board may suspend voting rights for a Regular Member

delinquent by more than 60 days in payment of any penalties or because of the Regular Member's failure to meet other obligations to the Corporation. Except with respect to the election of Industry Sector directors as described elsewhere in the Certificate of Incorporation and these Bylaws, matters properly brought before the Members at an annual or special meeting shall be acted upon by the Industry Sectors voting together as a single class. The vote of each Industry Sector shall be split into an affirmative component based on votes for the matter(s) presented, and a negative component based on votes against the matter(s) presented, in direct proportion to the votes cast within the Industry Sector for and against the matter presented, rounded to two decimal places. If authorized in advance by the Board, voting may be held electronically under such terms and conditions as are approved by the Board.

Section 5.6. Transfer of Membership. A Member of the Corporation may not transfer its membership or a right arising from it except to any Person succeeding to all or substantially all of the assets of the Member. If challenged, the President shall have authority to approve any such transfer, subject to review by the Board.

Section 5.7. Obligations of Members. By applying for and becoming a Regular or Associate Member of the Corporation, each Member agrees to comply with all Reliability Standards, all NERC standards and requirements, and the other obligations of Members of the Corporation set forth in these Bylaws or duly adopted by the Board in order to achieve the purposes of the Corporation. A Regular or Associate Member also agrees to obligate all of its Affiliates that have an impact on reliability in the Region to comply with all Reliability Standards and NERC standards and requirements. These obligations include but are not limited to: (a) obligations to provide data and information needed to perform the functions of the Corporation, (b) payment of any authorized penalties resulting from non-compliance with Reliability Standards, (c) in the case of Regular Members, electing the Board, and (d) providing qualified candidates to serve on organizational working groups. Adjunct Members agree to provide data and information needed to perform the functions of the Corporation.

Section 5.8. Withdrawal. A Member may withdraw from participation in the Corporation by providing written notice to the Corporation of such withdrawal. Such notice shall specify a date, not earlier than thirty (30) days from the date of notice, on which the withdrawal shall become effective; provided, however, that any such withdrawing Member shall remain liable to the Corporation for any dues or penalties or other obligations to the Corporation pursuant to Section 5.9 of these Bylaws.

#### Section 5.9. Funding and Dues.

5.9.1 NERC Funding. In accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation shall equitably allocate its dues, fees and other charges for the delegated functions conducted by the Corporation among all end users. The Corporation shall submit to NERC annually a list of all load-serving entities within the Region. NERC will bill all load-serving entities in the Region for the Corporation's costs for the delegated functions based on Net Energy for Load and be responsible for collection.



5.9.2 Application Fee, User-Fees and Other Charges. The Corporation may charge a nominal fee, which shall be determined by the President, for the submission of applications for membership. The Board of Directors may from time to time fix the amount of user-fees or other charges, if any, for activities that are not delegated to the Corporation by NERC under the Delegation Agreement and determine the methods of collection from entities that choose to participate in such activities.

Section 5.10. Penalties. If the Corporation initiates an investigation that leads to the imposition of a penalty, the Corporation shall receive any penalty monies that results from the investigation. All monies which the Corporation collects from the issuance of penalties shall be applied as a general offset to the Corporation's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the Corporation.

## ARTICLE VI. MEETING OF MEMBERS

Section 6.1. Annual Meeting of Members. The Members shall hold an annual meeting in December of each year, or at such other time specified by the Board. At the annual meeting of Members: (i) each Industry Sector shall elect the successor(s), if any, for any director(s) from their Industry Sector whose term will expire before the next annual meeting of the Members, provided however, that any Industry Sector may elect a successor director representing such Industry Sector prior to such annual meeting, in accordance with the provisions of this Article VI, in which case the election of such succeeding director(s) shall be reported to the Corporation at such annual meeting; (ii) the President and Treasurer shall report on the activities and financial condition of the Corporation; (iii) the Industry Sectors shall elect a slate of at-large and independent directors to fill vacancies or expiring terms; and (iv) the Industry Sectors shall consider and act upon such other matters as are consistent with the notice of the annual meeting. The failure to hold an annual meeting in accordance with these Bylaws shall not affect the validity of a corporate action.

Section 6.2. Special Meetings of Members. Special meetings of the Members may be called by six (6) directors on the Board, by the President, or by Members if at least ten percent (10%) of the Regular Members sign, date, and deliver to the President one or more written demands for a special meeting describing the purpose for which it is to be held. Within fifteen (15) days after receipt of a demand for a special meeting from Regular Members, the President shall cause a special meeting to be called and held on notice in accordance with Section 6.4 of these Bylaws. If the President fails to cause a special meeting to be called and held as required by this Section 6.2, a Regular Member making the demand may call the meeting by giving notice under Section 6.4. In either event, notice of the meeting and the costs of the meeting shall be at the expense of the Corporation. The business transacted at a special meeting is limited to the purposes stated within the notice of the meeting. Business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the

Corporation, unless ninety percent (90%) of the Regular Members entitled to vote were present at such meeting or have waived notice of the meeting under Section 6.4.

Section 6.3. Location of Meetings of Members. Meetings of Members shall be held at a location designated by the President or the Board. If a Regular Member calls a meeting pursuant to Section 6.2, the Regular Members making the demand for the meeting may designate the location, provided the meeting must be held within the Region and in a facility of appropriate size to accommodate the Members.

Section 6.4. Notice of Meetings.

6.4.1 Notice Requirements. Notice of meetings of Members must be given at least five (5) days before the date of a meeting and not more than sixty (60) days before the date of a meeting. The notice must contain the date, time and place of the meeting, instructions for electronic attendance or voting, if applicable, and an agenda of the matters upon which action may be taken at the meeting. A matter may be added to the agenda of a meeting at the meeting upon the affirmative vote of three-quarters (3/4) of the Industry Sector votes cast on a motion to amend the agenda. If the meeting is an adjourned meeting and the date, time and place of the meeting were announced at the time of the adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed. Notice shall be deemed given by the Corporation to the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each Member's representative authorized pursuant to section 6.10.1

6.4.2 Waiver of Notice; Objections. A Member may waive notice of a meeting of Members. A waiver of notice by a Member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a Member at a meeting is a waiver of notice of that meeting, unless the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 6.5. Record Date. The Board may fix a date not more than sixty (60) days before the date of a meeting of Members as the date for the determination of the Members entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only Members on that date are entitled to notice and to vote at the meeting unless the Board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than sixty (60) days after the record date for determining Members entitled to notice of the original meeting.

Section 6.6. Right to Vote; Act of Members.

6.6.1 Industry Sector Voting. Voting of the Members shall be by Industry Sector, with each Industry Sector entitled to cast one vote. Each Member entitled to vote in an Industry Sector shall be entitled to cast one vote in its Industry Sector. The vote of each Industry Sector shall be split into an affirmative component based on votes

for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast within the Industry Sector for and against the pending motion, rounded to two decimal places. To the extent practicable, all Member votes may be held electronically under such terms and conditions as are approved by the Board.

6.6.2 Act of Members. If a quorum is present, except with respect to any matter described in Section 6.5.3, a majority of the Industry Sector votes cast on the matter shall be the act of the Members.

6.6.3 Special Voting Requirements. Notwithstanding any other provision of these Bylaws, and except as set forth in the Certificate of Incorporation and Section 13.2 of these Bylaws, two-thirds (2/3) of the Industry Sector votes cast shall be required to:

(a) Amend the Bylaws, except as otherwise provided in Section 17.1 of these Bylaws. The substance of the proposed amendment must be contained in the notice of the meeting at which the vote will be taken; however, the Members may modify a proposed Bylaw amendment at the meeting.

(b) Approve any proposal to terminate the Corporation.

Section 6.7. Quorum. A quorum for a meeting of Members is a majority of the Regular Members entitled to vote in each Industry Sector at the meeting. A quorum for a meeting of an Industry Sector is a majority of the Regular Members of that Industry Sector entitled to vote at the meeting. In both cases, electronic participation is acceptable if authorized by the Board. A quorum is necessary for the transaction of business at a meeting of Members or of any Industry Sector. If a quorum is not present, a meeting may be adjourned for that reason by the Industry Sectors or Regular Members then represented or present.

Section 6.8. Action by Written Ballot. An action that may be taken at a regular or special meeting of Members may be taken without a meeting if the Corporation mails or delivers a written ballot to every Regular Member entitled to vote on the matter. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Solicitations for votes by written ballot must: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve the matter; (iii) specify the time by which a ballot must be received by the Corporation in order to be counted; and (iv) may not be revoked once received.

Section 6.9. Action by Electronic Communication. Any vote of an Industry Sector to elect a director or for any other purpose may be taken by electronic means without a meeting or during a meeting. In addition, a conference among Members by a means of communication through which the participants may simultaneously hear each other during the conference is a meeting of the Members, if the same notice is given of

the conference as would be required for a meeting and if the number of persons participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting. A Member may participate in a meeting of the Members by a means of communication through which the Member, other persons participating, and all persons physically present at the meeting may simultaneously communicate with each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.

#### Section 6.10. Member Representatives; Proxies.

6.10.1 Designation of Representative. Each year prior to the annual meeting of Members, each Regular Member shall designate the individual authorized to vote on Corporation matters on behalf of the Member, in accordance with procedures approved by the Board. A Regular Member may change such designation at any time by providing at least twenty-four (24) hour written notice to the Secretary of the Corporation. Such notice may be provided by electronic transmission.

6.10.2 Authorization. The individual designated to vote by a Regular Member may appoint a proxy to vote or otherwise act for the Regular Member at any meeting or by electronic transmission by signing an appointment form either personally or by an attorney so designated by the Regular Member.

6.10.3 Effective Period. An appointment of a proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes. An appointment is valid for the next regular or specially scheduled meeting or ballot by electronic transmission. However, a proxy is not valid for more than sixty (60) days from its date of execution.

6.10.4 Revocation. An appointment of a proxy is revocable by a Regular Member. Appointment of a proxy is revoked by the person appointing the proxy either by open declaration at a meeting or by signing and delivering a written revocation to the Secretary or other officer or agent authorized to tabulate proxy votes. This may be done either in a written statement that the appointment of the proxy is revoked or by a subsequent appointment that shall serve to cancel all prior proxies.

Section 6.11. Public Notice of Member Meetings. Notice to the public of the dates, times and places of meetings of the Members, and all nonconfidential material provided to the Members, shall be posted on the Corporation's website at approximately the same time that notice is given to the Members. Meetings of the Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

Section 6.12. Posting of Minutes. Minutes of meetings of Members shall be posted on the Corporation's website when available.

Section 6.13. Reimbursement of Member Expenses. The Corporation will be under no obligation to reimburse Members for expenses associated with their attendance at regular or special Member meetings.

ARTICLE VII.  
BOARD OF DIRECTORS

Section 7.1. General. The composition of the Board and the terms of office of the directors, the manner of their nomination, election or appointment, and other terms and conditions of their service, shall be as provided in the Certificate of Incorporation and these Bylaws if not inconsistent therewith.

Section 7.2. Management of Corporation. The business of the Corporation shall be managed under the direction of the Board. Specific functions of the Board shall include, but not be limited to:

- (a) govern the Corporation and oversee all of its activities;
- (b) establish and oversee all organizational groups;
- (c) approve, revise and enforce Reliability Standards utilizing a fair, open, balanced and inclusive process;
- (d) establish compliance monitoring procedures and requirements, and penalties and sanctions for non-compliance consistent with applicable NERC Rules;
- (e) impose penalties and sanctions consistent with the NERC Rules and the procedures approved by the Board;
- (f) establish and approve an annual budget for submission to NERC;
- (g) hire the Corporation's president and approve his or her salary;
- (h) annually at the first regular Board meeting following the annual meeting of Members, elect a Chair ("Chair") and a vice-chair from among the directors on the Board; and
- (i) establish Board committees as appropriate.

Section 7.3. Voting. Each director shall have one vote with respect to decisions of the Board.

Section 7.4. Composition of the Board. Effective as of the date of the first annual meeting of Members:

- (a) The Board shall consist of fourteen (14) directors.
- (b) Eight directors shall be elected by the Industry Sectors as follows:

- (i) Suppliers shall elect two (2) directors;
- (ii) Transmission Companies shall elect two (2) directors;
- (iii) RTOs shall select one (1) director;
- (iv) Small LSEs shall elect one (1) director;
- (v) Medium LSEs shall elect one (1) director; and
- (vi) Large LSEs shall elect one (1) director.

(c) Three (3) directors shall be at-large. At-large directors shall be elected by all of the Industry Sectors voting together as a single class.

(d) Three (3) directors shall be independent from the Corporation and any Member or any Affiliate or Related Party of any Member. Independent directors shall be elected by all of the Industry Sectors voting together as a single class.

(e) Industry Sectors shall elect their respective sector and at-large directors from among individuals holding senior management positions in Member organizations. Any sector-elected or at-large director whose Member organization changes Industry Sectors or who ceases to hold a senior management position in a Member organization shall continue to serve out his or her remaining term, unless such director resigns or is removed. When selecting at-large directors, Industry Sectors shall consider such factors as the geographic and functional representation of the Board. No two directors may be employees of a single Member or any Affiliate or Related Party of a Member or any Affiliate.

(f) An independent director is a person (i) who is not an officer or employee of the Corporation, an officer, director, or employee of a Member, or an officer, director or employee of any entity that would reasonably be perceived as having a direct financial interest in the outcome the Board's decisions, or (ii) who does not have a relationship that would interfere with the exercise of independent judgment in carry out the responsibilities of a director. The Board may adopt additional standards for director independence not inconsistent herewith.

(g) At-large and independent directors shall be nominated by the nominating and governance committee of the Board. The nominating and governance committee shall seek out for nomination independent directors from diverse backgrounds, who will contribute to the effective functioning of the Board and the Corporation by bringing a broad range of industry expertise, viewpoints, experiences, skill sets and knowledge. The nominating and governance committee will establish procedures to ensure that diverse candidates are in the pool of applicants for every independent director position and will retain an independent consultant to prepare a list of individuals qualified and willing to serve as independent directors.

(h) Any director which the full Board has determined has a conflict of interest on any compliance or enforcement matter brought before the Board shall not vote on such matter and shall recuse himself or herself from all Board deliberations concerning such matter.

(i) There will be no alternates or proxies for directors.

Section 7.5. Terms of Directors. The directors will be divided into three classes. The term of office of the first class will expire at the second annual meeting of Members; the term of office of the second class will expire one year thereafter; and the term of office of the third class two years thereafter. At each annual meeting of Members, directors shall be chosen for a three year term to succeed those whose term expires. The directors for each class will be selected by lot at the first annual meeting of directors, provided that no two at-large directors, no two independent directors and no two directors of the same Industry Sector shall be in the same class. Each director shall hold office until (a) the expiration of the term for which he or she was elected and until his or her successor is elected and qualified, or (b) his or her earlier death, resignation or removal. Any director may be removed at any time by the affirmative vote of two-thirds of the Industry Sector or Industry Sectors, as applicable, electing such director. A director may be removed by the Board for non-attendance at three consecutive Board meetings.

Section 7.6. Reimbursement. Independent directors shall have the right to reimbursement by the Corporation of their actual reasonable travel expenses to Board meetings or when specifically selected to represent the Corporation at a business meeting. The directors elected by the Industry Sectors and the at-large directors shall not be reimbursed by the Corporation for any expenses, unless specifically approved in advance by resolution of the Board.

Section 7.7. Resignations; Vacancies.

(a) Resignations. A director may resign at any time from the Board by submitting a written resignation to the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation.

(b) Vacancies. If an Industry Sector or at-large director resigns, dies or otherwise becomes incapacitated or is removed during the term of office for which elected, the directorship shall thereupon be vacant and shall be filled by the Industry Sector or Industry Sectors, as applicable, by written or electronic ballot in accordance with the procedures and requirements set forth above. The successor director elected by the Industry Sector shall hold office for the unexpired term of the vacated directorship replaced. If an independent director ceases to be independent, as determined by the Board, his or her directorship shall thereupon be vacant and may be filled by the Board until the next annual meeting of Members, at which time a permanent successor shall be elected by the Industry Sectors for the remainder of the unexpired term.

Section 7.8. Meetings; Notice; Waiver.

(a) Meetings. An annual meeting of the Board shall be held without notice immediately following the annual meeting of the Members. The Board shall elect the Chair and Vice-Chair for the next year at the annual meeting. In addition, regular meetings may be held at such time or times as fixed by the Board. Special meetings of the Board may be called by the Board's Chair, the President or by any three directors and shall be held at the principal office of the Corporation, or such other place within the Region as determined by the Chair or the President after consultation with the Board.

(b) Notice. Notice of the dates, times, and places of all regular and special meetings of the Board shall be published by the Secretary and provided to all directors and Members not less than three (3) days prior to the date of the meeting. Notice shall be deemed given by the Corporation to directors and the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each director and each Member's representative authorized pursuant to section 6.10.1.

(c) Waiver. Any person entitled to notice of a regular or special meeting of the Board may waive notice thereof. A waiver of notice by a person entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting of the Board is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 7.9. Quorum. For the Board to take action at a meeting, a quorum of directors must be present. A quorum is a majority of the directors then in office, provided that: (a) if there are three independent directors holding office, two independent directors must be present to constitute a quorum, or (b) if there are two independent directors holding office, one independent director must be present to constitute a quorum. If there is only one independent director or no independent directors holding office, there is no requirement that an independent director be present in order for the Board to have a quorum. In the absence of a quorum, a majority of the directors present may adjourn a meeting, without notice, except as may be given at such meeting, until a quorum is present.

Section 7.10. Board Action. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law or these Bylaws.

Section 7.11. Action Without a Meeting. Any action required or permitted to be taken at a Board meeting or any committee thereof may be taken by written action, signed by all of the directors of the Board or members of the committee, as the case may be. The written action is effective when signed by the directors unless a different effective time is provided in the written action. Any nonconfidential material provided to



the Board or a committee in connection with such written action shall be posted on the Corporation's website at approximately the same time that it is given to the Board or the committee. Written actions shall be filed with the minutes of the Corporation and the results of such written action shall be promptly posted on the Corporation's website.

Section 7.12. Action by Electronic Communication. A conference among directors by a means of communication through which the directors may simultaneously hear each other during the conference is a Board meeting if the same notice is given of the conference as would be required for a meeting and if the number of directors participating in the conference is a quorum. Participation in a meeting by this means constitutes personal presence at the meeting. A director may participate in a Board meeting by any means of communication through which the director, other directors participating, and all directors physically present at the meeting may simultaneously communicate with each other during the meeting.

Section 7.13. Board Committees. The Board shall have an audit committee, compensation committee, nominating and governance committee and compliance committee, and such other committees the Board deems necessary and appropriate. Each committee shall be comprised of not less than three directors. The compliance committee shall be comprised of five directors, a majority of whom are independent directors. The Board may require that a minimum number of independent directors serve on each of these committees. The Board shall have the power to appoint, and to delegate authority to, such committees of the Board as it determines to be appropriate from time to time. The Board may require any committee to adopt a charter, subject to approval by the Board, governing the activities and authority of the committee and the composition of its members.

Section 7.14. Hearing Body. The Hearing Body shall consist of the Board compliance committee.

7.14.1 Quorum. For the Hearing Body to take action at a hearing, a quorum of members must be present. A quorum is a majority of members of the Hearing Body, provided that at least two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum, provided that the requirement that at least two independent directors are present for a quorum shall at all times continue to be met. Such new member shall serve on the Hearing Body for purposes of the subject hearing through the conclusion of the hearing but not thereafter.

7.14.2 Voting. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present.

~~Section 7.14.~~ Section 7.15. Public Notice of Board Meetings. Notice to the public of the dates, times and places of Board meetings, including committees thereof, and all nonconfidential material provided to the Board or the committees, shall be posted on the Corporation's website, and notice of Board and committee meetings shall be sent by electronic transmission to Members, at approximately the same time that

notice is given to the Board or the committee, as the case may be. Board and committee Meetings shall be open to all Members and the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that any meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

~~Section 7.15.~~Section 7.16. Posting of Minutes. Minutes of Board and committee meetings shall be posted on the Corporation's website when available.

~~Section 7.16.~~Section 7.17. Compensation of Directors. The directors elected by the Industry Sectors and the at-large directors shall not receive compensation for their service to the Corporation as directors on the Board. The independent directors shall be entitled to such compensation as the Board may from time to time determine. Nothing contained in these Bylaws shall preclude any director from receiving compensation for services to the Corporation in any other capacity.

## ARTICLE VIII. ORGANIZATIONAL GROUPS

Section 8.1. Establishment of Organizational Groups. The Board shall establish such organizational groups, consisting of committees, sub-committees, task forces and working groups of Members, as are necessary and appropriate to accomplish the purposes of the Corporation in an efficient and cost-effective manner. All organizational groups shall be subject to the direction and control of the Board. The membership of organizational groups shall be determined based upon experience, expertise and geographic diversity and to the extent practicable shall include balanced representation of the Industry Sectors. The Board shall establish policies and procedures governing the creation of organizational groups, how they are populated, how voting and related matters are conducted, how they may be reorganized and the direction and termination of such groups. The Board shall conduct a review of all organizational groups of the Corporation on an annual basis to ensure that the business of the Corporation is conducted in an efficient, cost-effective manner.

Section 8.2. Reimbursement. The Board may authorize reimbursement for persons acting on behalf of the Corporation, as necessary in the interests of the Corporation.

## ARTICLE IX. OFFICERS

Section 9.1. Officers. The officers of the Corporation shall include a President, one or more Vice Presidents, a Secretary, a Treasurer and any other officers as may be elected or appointed in accordance with the provisions of this Article. The Board may elect or appoint any additional officers that it deems desirable, such other officers to

have the authority and perform the duties prescribed by the Board. The same individual may hold any number of offices, except that of President.

Section 9.2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board. Each officer shall hold office at the pleasure of the Board. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. New officers may be created and the positions filled at any meeting of the Board. Each elected officer shall hold office until his or her successor has been duly elected and qualified or upon his or her earlier resignation or removal.

Section 9.3. Removal. Any officer elected by the Board may be removed by the affirmative vote of two-thirds (2/3) of the Board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 9.4. Vacancies. A vacancy in any office because of death, incapacity, resignation, removal, disqualification, or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 9.5. President. The President shall:

- (a) be the principal executive and operating officer of the Corporation;
- (b) sign certificates of membership, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation; and
- (c) perform all duties incident to the office of President, including hiring and directing staff, and such other duties as may be prescribed by the Board from time to time.

Section 9.6. Vice Presidents. The Vice President(s) shall perform such duties and have such powers as the Board or President may from time to time prescribe. At the request of the Board, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 9.7. Secretary. The Secretary shall ensure that the following duties are carried out:

- (a) the minutes of the meetings of the Members and of the Board, and each committee thereof, are recorded;

(b) all required notices are duly given in accordance with these Bylaws and as required by law;

(c) a register of the current names and addresses of all Members is maintained and posted on the Corporation's website;

(d) a complete copy of the Certificate of Incorporation and Bylaws of the Corporation containing all amendments thereto are kept on file at all times and posted on the Corporation's website, which copies shall always be open to the inspection of any Member; and

(e) generally perform all duties incident to the office of Secretary and such other duties as may be prescribed by the Board from time to time.

Section 9.8. Treasurer. The Treasurer shall be responsible for the following activities:

(a) maintain custody of all funds and securities of the Corporation;

(b) receipt of and the issuance of receipts for all monies due and payable to the Corporation and for deposit of all such monies in the name of the Corporation in such bank or banks or financial institutions as shall be selected by the Board; and

(c) generally perform all duties incident to the office of Treasurer and such other duties as may be prescribed by the Board from time to time.

#### ARTICLE X. CERTIFICATES OF MEMBERSHIP

Section 10.1. Certificates of Membership. The Board may, but need not, provide for the issuance of certificates evidencing membership in the Corporation, which certificates shall be in such form as may be determined by the Board.

#### ARTICLE XI. BOOKS AND RECORDS

Section 11.1. Books and Records; Financial Statements. The Corporation shall keep at such office selected by the Board correct and complete copies of its Certificate of Incorporation and Bylaws, accounting records, and minutes of meetings of Members, Board, and committees having any of the authority of the Board. A Member, or the agent or attorney of a Member, may inspect all books and records for any proper purpose at any reasonable time. Upon request, the Corporation shall give the Member a statement showing the financial result of all operations and transactions affecting income and expenses during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.

ARTICLE XII.  
FISCAL YEAR

Section 12.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

ARTICLE XIII.  
TRANSFER OF ASSETS

Section 13.1. Member Approval Not Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation, by affirmative vote of the Board, may sell, lease, transfer, or dispose of its property and assets in the usual and regular course of its activities and grant a security interest in all or substantially all of its property and assets in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient, in which case no Member approval is required.

Section 13.2. Member Approval Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient only when approved at a regular or special meeting of the Members by the affirmative vote of two-thirds (2/3) of all the Members. Notice of the meeting must be given to the Members. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the Corporation.

ARTICLE XIV.  
CONTRACTS, CHECKS, DEPOSITS, AND GIFTS

Section 14.1. Contracts. The Board may authorize any officer or officers or agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or may be confined to specific instances.

Section 14.2. Checks, Drafts, or Orders. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, may be signed by such officer or officers or agent or agents of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board.

Section 14.3. Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 14.4. Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for any purpose of the Corporation.

ARTICLE XV.  
INSURANCE, LIMITATION ON LIABILITY AND INDEMNIFICATION

Section 15.1. Insurance. The President is authorized to procure insurance to protect the Corporation against damages arising out of or related to any directive, order, procedure, action or requirement of the Corporation.

Section 15.2. Limitations on Liability. As provided in Article Fourteenth of the Certificate of Incorporation, a director of the Corporation shall not be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of Article Fifteenth of these Bylaws by the Members of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

Section 15.3. Right to Indemnification.

15.3.1 Indemnified Persons. Each person who was or is made a party or is threatened to be made a party to or is involved in or called as a witness in any Proceeding because he or she is an Indemnified Person shall be indemnified and held harmless by the Corporation to the fullest extent permitted under the Delaware General Corporation Law (the "DGCL"), as the same now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment). Such indemnification shall cover all expenses incurred by an Indemnified Person (including, but not limited to, attorneys' fees and other expenses of litigation) and all liabilities and losses (including, but not limited to, judgments, fines, ERISA or other excise taxes or penalties and amounts paid or to be paid in settlement) incurred by such person in connection therewith.

15.3.2 Denial of Authorization for Certain Proceedings. Notwithstanding anything to the contrary in this Section 15.3, except with respect to indemnification of Indemnified Persons specified in paragraph 15.3.3 of this Section 15.3, the Corporation shall indemnify an Indemnified Person in connection with a Proceeding (or part thereof) initiated by such person only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of notice thereof from such Indemnified Person.

15.3.3 Certain Defined Terms. For purposes of this Section 15.3, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(1) a “Proceeding” is any investigation, action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom.

(2) an “Indemnified Person” is a person who is, was, or had agreed to become a Director of the Corporation (including, in the case of such person seeking indemnification while serving as a Director who is or was an officer of the Corporation, such person in his capacity as an officer.)

15.3.4 Expenses. Expenses, including attorneys’ fees, incurred by a person indemnified pursuant to paragraph 15.3.1 in defending or otherwise being involved in a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding, including any appeal therefrom, upon receipt of an undertaking (the “Undertaking”) by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation; provided that in connection with a Proceeding (or part thereof) initiated by such person, except a Proceeding authorized by paragraph 15.3.5, the Corporation shall pay said expenses in advance of final disposition only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of a request for such advancement accompanied by the Undertaking. A person to whom expenses are advanced pursuant hereto shall not be obligated to repay such expenses until the final determination of any pending Proceeding in a court of competent jurisdiction concerning the right of such person to be indemnified or the obligation of such person to repay such expenses.

15.3.5 Protection of Rights. If a claim by an Indemnified Person under paragraph 15.3.1 is not promptly paid in full by the Corporation after a written claim has been received by the Corporation or if expenses pursuant to paragraph 15.3.4 have not been promptly advanced after a written request for such advancement by an Indemnified Person (accompanied by the Undertaking required by paragraph 15.3.4) has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or the advancement of expenses. If successful, in whole or in part, in such suit, such claimant shall also be entitled to be paid the reasonable expense thereof. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the Undertaking has been tendered to the Corporation that indemnification of the claimant is prohibited by law, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, independent legal counsel, or the Members) to have made a determination, if required, prior to the commencement of such action that indemnification of the claimant is proper in the circumstances, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the Members) that indemnification of the claimant is prohibited, shall be a defense to the action or create a presumption that indemnification of the claimant is prohibited.

#### 15.3.6 Miscellaneous.

(a) Non-Exclusivity of Rights. The rights conferred on any person by this Section 15.3 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote of Members or disinterested directors or otherwise. The Board shall have the authority, by resolution, to provide for such other indemnification of directors, and such indemnification of officers, delegates, employees, agents, or others of the Corporation as it shall deem appropriate.

(b) Insurance, contracts, and funding. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, delegate or agent of the Corporation against any expenses, liabilities or losses, whether or not the Corporation would have the power to indemnify such person against such expenses, liabilities or losses under the DGCL. The Corporation may enter into contracts with any director, officer, or employee of the Corporation in furtherance of the provisions of this Section 15.3 and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect the advancing of expenses and indemnification as provided in such contracts or as otherwise provided in this Section 15.3.

(c) Contractual nature. The provisions of this Section 15.3 shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person. This Section 15.3 shall be deemed to be a contract between the Corporation and each person who, at any time that this Section 15.3 is in effect, serves or agrees to serve in any capacity which entitles him to indemnification and advancement of expenses hereunder and any repeal or other modification of this Section 15.3 or any repeal or modification of the DGCL or any other applicable law shall not limit any rights of indemnification for Proceedings then existing or arising out of events, acts or omissions occurring prior to such repeal or modification, including, without limitation, the right to indemnification and advancement of expenses for Proceedings commenced after such repeal or modification to enforce this Section 15.3 with regard to Proceedings arising out of acts, omissions or events arising prior to such repeal or modification.

(d) Cooperation. Each Indemnified Person shall cooperate with the person, persons or entity making the determination with respect to such Indemnified Person's entitlement to indemnification under this Section 15.3, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to such Indemnified Person and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by such Indemnified Person in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to such Indemnified Person's entitlement to indemnification) and the



Corporation hereby indemnifies and agrees to hold such Indemnified Person harmless therefrom.

(e) Subrogation. In the event of any payment under this Section 15.3 to an Indemnified Person, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of such Indemnified Person, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

(f) Severability. If this Section 15.3 or any portion hereof shall be invalidated or held to be unenforceable on any ground by any court of competent jurisdiction, the decision of which shall not have been reversed on appeal, this Section 15.3 shall be deemed to be modified to the minimum extent necessary to avoid a violation of law and, as so modified, this Section 15.3 and the remaining provisions hereof shall remain valid and enforceable in accordance with their terms to the fullest extent permitted by law.

#### ARTICLE XVI. TRANSITION

Section 16.1. Transition Standards. Standards. The Corporation will use the existing standards, criteria, rules or guides from each existing reliability council region for those Members that join the Corporation as in effect immediately prior to formation of the Corporation until such standards, criteria, rules or guides are adopted, superseded, or rejected by the Corporation. The Corporation will establish any necessary transition committees, subcommittees, working groups or task forces to administer the existing regional reliability standards, criteria, rules and guides until they are adopted, superseded, or rejected by the Corporation. The Corporation will employ its best efforts, within two (2) years of its formation, to work toward a uniform set of Reliability Standards for the entire Region. The Board will develop and implement a standards process and a plan for transition to new Reliability Standards. This process will include a requirement that two-thirds of the directors present at a meeting must vote to adopt new Reliability Standards.

#### ARTICLE XVII. PARTICIPATION BY REGULATORY PARTICIPANTS

Section 17.1. Regulatory Participants. All Regulatory Participants shall be entitled to and be provided with the same rights to notice of and participation in meetings or other activities of the Corporation as are provided to Members, but shall not have the right to vote.

#### ARTICLE XVIII. BUDGET AND BUSINESS PLAN

Section 18.1. Budget and Business Plan. Each annual budget and business plan of the Corporation shall be approved by the Board in sufficient time in each fiscal year to allow for timely submittal of the approved annual budget and business plan to

NERC in accordance with the NERC Rules. The Corporation shall post a draft of each budget and business plan on the Corporation's website for purposes of review and comment by the Members at least ten (10) days prior to the Board meeting at which the budget and business plan are to be approved.

ARTICLE XIX.  
AMENDMENT OF BYLAWS

Section 19.1. Amendment Of Bylaws. The power to adopt, amend or repeal these Bylaws is vested in the Members as set forth in Section 6.6.3 of these Bylaws; provided, however, that upon the passage of any federal electric reliability legislation, and/or the adoption of any rules or regulations of the Commission, NERC or other governmental entity with jurisdiction, the Board shall have authority to amend these Bylaws as necessary and appropriate to comply with such law, legislation, rules and regulations.

## Exhibit C – Regional Standard Development Procedure

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

### **COMMON ATTRIBUTE 1**

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

### **COMMON ATTRIBUTE 2**

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

### **COMMON ATTRIBUTE 3**

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

### **COMMON ATTRIBUTE 4**

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

### **COMMON ATTRIBUTE 5**

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

### **COMMON ATTRIBUTE 6**

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

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

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

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

### **COMMON ATTRIBUTE 7**

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

### **COMMON ATTRIBUTE 8**

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

### **COMMON ATTRIBUTE 9**

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

### **COMMON ATTRIBUTE 10**

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

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

### **COMMON ATTRIBUTE 11**

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

### **COMMON ATTRIBUTE 12**

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

### **COMMON ATTRIBUTE 13**

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

### **COMMON ATTRIBUTE 14**

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

### **COMMON ATTRIBUTE 15**

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

### **COMMON ATTRIBUTE 16**

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

### **COMMON ATTRIBUTE 17**

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

The [standards] committee shall give due consideration to the work of the drafting team, as well as the comments of stakeholders and minority objections, in approving a proposed regional reliability standard for submittal to the [Regional Entity Name] board. The [standards] committee may vote to approve or not approve the standard. Alternatively, the [standards] committee may remand the standard to the drafting team for further work or form a new drafting team for that purpose.

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

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

### **COMMON ATTRIBUTE 18**

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

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

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

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

### **COMMON ATTRIBUTE 19**

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

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

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

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

### **COMMON ATTRIBUTE 20**

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

### **COMMON ATTRIBUTE 21**

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

### **COMMON ATTRIBUTE 22**

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

### **COMMON ATTRIBUTE 23**

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

#### **COMMON ATTRIBUTE 24**

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

#### **COMMON ATTRIBUTE 25**

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

#### **COMMON ATTRIBUTE 26**

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

#### **COMMON ATTRIBUTE 27**

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

#### **COMMON ATTRIBUTE 28**

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

#### **COMMON ATTRIBUTE 29**

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

#### **COMMON ATTRIBUTE 30**

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

### **COMMON ATTRIBUTE 31**

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

### **COMMON ATTRIBUTE 32**

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

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

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

Reliability*First* Reliability Standards Development Procedure  
Board Approval December 6<sup>th</sup>, 2007

[Standards Committee Modified April 1<sup>st</sup>, 2008 - Board Concurrence May 22<sup>nd</sup>, 2008](#)

# Reliability *First* Corporation Reliability Standards Development Procedure

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# Reliability*First* Corporation Reliability Standards Development Procedure

## Introduction

This procedure establishes the process for adoption of a Regional Reliability Standard<sup>1</sup> (hereinafter referred to as “Standard”) of the Reliability*First* Corporation (Reliability*First*) and the development of consensus for adoption, approval, revision, reaffirmation, and deletion of such Standards<sup>1</sup>. Reliability*First* Standards provide for the reliable regional and sub-regional planning and operation of the Bulk Power System<sup>2</sup> (BPS), consistent with Good Utility Practice<sup>2</sup> within the Reliability*First* geographical footprint.

This procedure was developed under the direction of the Reliability*First* Board of Directors (Board), who may request changes to this Reliability*First* Reliability Standards Development Procedure (hereinafter referred to as “this Procedure”) as deemed appropriate. A procedure for revising this Procedure is contained in Appendix A. This Procedure is consistent with the North American Electric Reliability Council (NERC) Reliability Standards Development Procedure.

Proposed Standards shall be subject to approval by NERC, as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the FPA. No Standard shall be effective within the Reliability*First* area unless filed by NERC with FERC and approved by FERC.

Reliability*First* Standards shall provide for as much uniformity as possible with NERC reliability standards across the interconnected BPS. A Reliability*First* Standard shall be more stringent than a NERC reliability standard, including a regional difference that addresses matters that the NERC reliability standard does not, or shall be a regional difference necessitated by a physical difference in the BPS. A Reliability*First* Standard that satisfies the statutory and regulatory criteria for approval of proposed NERC reliability standards, and that is more stringent than a NERC reliability standard, would generally be acceptable.

Reliability*First* Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable BPS owners, operators, and users within the Reliability*First* area, regardless of membership in the region.

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<sup>1</sup> Legacy standards, such as ECAR Documents, MAIN Guides, and MAAC Procedures shall be considered Reliability*First* Regional Reliability Standards for the purposes of this document until otherwise acted upon by the Reliability*First* Board

<sup>2</sup> As defined in the Reliability*First* By-laws Board Approval December 6<sup>th</sup>, 2007

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## Background

Regions may develop, through their own processes, separate “Regional Standards” (Reliability*First* Standards) that go beyond, add detail to, or implement NERC reliability standards, or otherwise address issues that are not addressed in NERC reliability standards.

As a condition of Reliability*First* membership, all Reliability*First* Members<sup>2</sup> agree to adhere to the NERC reliability standards. As such, the Reliability*First* and its Members will adhere to the NERC reliability standards in addition to the Reliability*First* Standards. NERC reliability standards and the Reliability*First* Standards are both to be included within the Reliability*First* Compliance Program.

Reliability*First* Standards are intended to apply only to that part of the Eastern Interconnection within the Reliability*First* geographical footprint. The development of these Reliability*First* Standards is developed according to the following principles via the process contained within this Procedure:

- Developed in a fair and open process that provided an opportunity for all interested parties to participate;
- Does not have an adverse impact on commerce that is not necessary for reliability;
- Provides a level of BPS reliability that is adequate to protect public health, safety, welfare, and national security and would not have a significant adverse impact on reliability; and
- Based on a justifiable difference between Regions or between sub-Regions within the Regional geographic area.

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<sup>2</sup> As defined in the Reliability*First* By-laws  
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## **Regional Reliability Standard Definition, Characteristics, and Elements**

### ***Definition of a Reliability Standard***

As contained in the ReliabilityFirst By-laws, ReliabilityFirst “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

Inherent in this definition, a ReliabilityFirst Standard will define certain obligations or requirements of entities that own, operate, plan, and use the BPS within the ReliabilityFirst geographical footprint. These obligations or requirements as contained in the ReliabilityFirst Standards are to be ~~material to reliability and be~~ measurable consistent with Good Utility Practice. Standards are not to include processes or procedures that implement a Standard. In addition, obligations, requirements or procedures imposed upon ReliabilityFirst by NERC reliability standards are not to be ReliabilityFirst Standards, unless those obligations, requirements or procedures require the establishment of a “policy or standard” as defined by the ReliabilityFirst By-laws.

### ***Characteristics of a Regional Reliability Standard***

A Standard is policy or standard, including adequacy criteria to provide for the reliable regional and sub-regional planning and operation of the BPS, consistent with Good Utility Practice

A Standard shall generally have the following characteristics:

- **Measurable** - A Standard shall establish technical or performance requirements that can be practically measured.
- **Relative to NERC Reliability Standards** - A Standard generally must go beyond, add detail to, or implement NERC Reliability Standards, or cover matters not addressed in NERC Reliability Standards.

### ***Format Requirements of a Regional Reliability Standard***

A Standard shall consist of the format requirements shown in the Regional Reliability Standard Template. These requirements apply to the development and revision of Standards. These requirements are necessary to achieve Standards that are measurable,

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enforceable, and consistent. Supporting documents to aid in the implementation of a Standard may be referenced by the Standard but are not part of the Standard itself.

### Regional Reliability Standard Format Requirement Template

<b>Identification Number</b>	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference ReliabilityFirst documentation.
<b>Title</b>	A brief, descriptive phrase identifying the topic of the Standard.
<b>Applicability</b>	Clear identification of the functional classes of entities responsible for complying with the Standard, noting any specific additions or exceptions. If not applicable to the entire ReliabilityFirst area, then a clear identification of the portion of the BPS to which the Standard applies. Any limitation on the applicability of the Standard based on electric facility requirements should be described.
<b>Effective Date and Status</b>	The effective date of the Standard or, prior to approval of the Standard, the proposed effective date.
<b>Purpose</b>	The purpose of the Standard. The purpose shall explicitly state what outcome will be achieved or is expected by this Standard.
<b>Requirement(s)</b>	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.

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<b>Risk Factor(s)</b>	<p>The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below:</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to abnormal condition.</p> <p>A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the BPS, or the ability to effectively monitor and control the BPS, but is unlikely to lead to BPS instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to BPS instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor and control the BPS; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS.</p>
<b>Measure(s)</b>	<p>Each requirement shall be addressed by one or more measurements. Measurements that will be used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measurement identifies to whom the measurement applies. Each measurement shall be tangible, practical, and as objective as is practical. Achieving the full compliance level of each measurement should be a necessary and sufficient indicator that the requirement was met.</p>

Compliance Administration Elements

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

<b>Interpretations</b>	Any Reliability <i>First</i> interpretations of the Standards that were developed, and approved in accordance with the “Interpretation of Standards” section of this Procedure, to expound on the application of the Standard for unusual or unique situations or provide clarifications.
<b>Implementation Plan</b>	Each Reliability <i>First</i> Standard shall have an associated implementation plan describing the effective date of the Standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the Standard in the compliance program and other considerations in the initial use of the Standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
<b>Supporting References</b>	This section references related documents that support reasons for, or otherwise provide additional information related to the Standard Examples include, but are not limited to: <ul style="list-style-type: none"> <li>• Glossary of Terms</li> <li>• Developmental history of the Standard and prior versions</li> <li>• Subcommittee(s) responsible for Standard</li> <li>• Notes pertaining to implementation or compliance</li> <li>• Standard references</li> <li>• Procedures/Practices</li> <li>• Training and/or Technical Reference</li> </ul>

## Roles in the Regional Reliability Standards Development Process

### *Process Roles*

**Originator** - Any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the Reliability*First* BPS, is allowed to request a Standard be developed or an existing Standard is modified, or deleted, by creating a Standards Authorization Request (SAR). See Appendix B.

**Board** – The Reliability*First* Board shall act on any proposed Standard that has gone through the process contained in this Procedure. Once the Reliability*First* Board approves a Standard, compliance with the Standard will be enforced consistent with the By-laws and the terms of the Standard.

**Standards Committee (SC)** - The Reliability*First* SC will consider which requests for new or revised Standards shall be assigned for development (or existing Standards considered for deletion). The SC manages the Standards development process. The SC

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will advise the ReliabilityFirst Board on Standards presented for adoption by the ReliabilityFirst Board.

**Standards Process Manager (SPM)** – A person or persons on the ReliabilityFirst staff assigned the task of ensuring that the development, revision or deletion of Standards is in accordance with this Procedure. The SPM works to ensure the integrity of the process and consistency of quality and completeness of the Standards. The SPM facilitates the administration of all actions contained in all steps in the process.

**Standards Process Staff** – Employees of the ReliabilityFirst that work with or for the SPM.

**Interim Compliance Committee (ICC)** – The ReliabilityFirst committee responsible for the administration of the ReliabilityFirst Compliance Program. The duties of this committee includes, but not limited to, providing inputs and comments during the standards development process to ensure the measures will be effective and other aspects of the Compliance Program can be practically implemented.

**Standard Drafting Team (SDT)** – Normally a team of technical experts, and typically includes a member of the ReliabilityFirst Standards staff and the Originator, assigned the task of developing a proposed Standard based upon an approved SAR using the Standard development process contained in this Procedure.

**Ballot Body (BB)** – The Ballot Body comprises all entities that qualify for one or more of the categories and are registered with ReliabilityFirst as potential ballot participants in the voting on standards. The categories of registration within the Ballot Body and the registration process are described in Appendix D.

**Ballot Pool** – The Ballot Pool is comprised of those members of the Ballot Body that register to vote for each particular standard that is up for vote. A separate Ballot Pool is established for each standard up for vote. Only individuals who have joined the Ballot Pool for that particular standard are eligible to vote on a standard.

**Regional Reliability Standard Development Process** (Flow chart of Process shown in Appendix C)

### *Assumptions and Prerequisites*

The ReliabilityFirst Regional Reliability Standards Development Process has the following characteristics:

- **Fair due process** - The ReliabilityFirst standards development process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the

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proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

- **Openness** - Participation is open to all Organizations who are directly and materially affected by the Reliability*First* region BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in the Reliability*First*, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to the Reliability*First* membership and to others.
- **Balanced** - The Reliability*First* standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.
- **Inclusive** - Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the BPS in the Reliability*First* area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.
- **Transparent** - All actions material to the development of Reliability*First* Standards shall be transparent. All standards development meetings shall be open and publicly noticed on Reliability*First*'s Web site.
- Does not unnecessarily delay development of the proposed Standard.

**Note:** The term “days” refers to calendar days.

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

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

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

***Step 1 - Development of a Standards Authorization Request (SAR) to Develop, Revise or Delete a Regional Reliability Standard***

Any individual representing an organization (Originator) which is directly or materially impacted by the operation of the BPS within the geographical footprint of the ReliabilityFirst may request, via a submittal of a Standard Authorization Request (SAR) form, the development, modification, or deletion of a ReliabilityFirst Standard. Any such request shall be submitted to the ReliabilityFirst SPM, or his/her designee, or by another process as otherwise posted on the ReliabilityFirst website. The SAR form may be downloaded from the ReliabilityFirst website.

The SAR contains a description of the proposed Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Standard. The SPM will verify that the submitted SAR form has been adequately completed. The SPM may offer the Originator suggestions regarding changes and/or improvements to improve clarity and assist the ReliabilityFirst community to understand the Originator's intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the SPM will electronically acknowledge receipt of the SAR.

The SPM will forward all adequately completed SARs to the ReliabilityFirst SC. Within 60 days of receipt of an adequately completed SAR, the SC shall determine the disposition of the SAR. The disposition decision and decision process shall use the normal "business rules and procedures" of the SC then in effect. The SC may take one of the following actions:

- Accept the SAR as a candidate for: development of a new Standard, revision of an existing Standard or deletion of an existing Standard. The SC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The SC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the SC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision.
- Remand the SAR back to the Originator for additional work. The SPM will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the SC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the SC

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Any SAR that is accepted by the SC for development of a Standard (or modification or deletion of an existing Standard) shall be posted for public viewing on the ReliabilityFirst website within no greater than 30 days of acceptance by the SC. The status of posted SARs will be publicly noted at regularly scheduled (appropriately two weeks) intervals.

Any documentation of the deliberations of the SC concerning SARs shall be made available according to the “ReliabilityFirst Standards Committee Governance” document then in effect.

The SC shall submit a written report to the ReliabilityFirst Board on a periodic basis (at least at every regularly scheduled ReliabilityFirst Board meeting) showing the status of all SARs that have been brought to the SC for consideration.

### ***Step 2 – Formation of the Standard Drafting Team and Declaration of Milestone Date***

Upon acceptance by the SC of a SAR for development of a new Standard (or modification or deletion of an existing Standard), the SC shall direct the SPM to develop a qualified balance slate for the SDT using the specific directions and preferences of the SC. The SPM will send out self-nomination forms to solicit SDT nominees. The SDT will consist of a group of people (members of ReliabilityFirst and, as appropriate, non-members) who collectively have the necessary technical expertise and work process skills. The SPM will recommend a slate of ad-hoc individuals or a preexisting task force, work group or similar for the SDT based upon the SC’s desired SDT capabilities.

The SC may also direct the SPM to designate an existing ReliabilityFirst committee (or subset thereof) as the SDT augmented by other persons as may be appropriate for the subject matter. The SC will insure that SDT membership includes all necessary administrative support. This support typically includes a ReliabilityFirst staff member and the Originator if he/she chooses to participate. The SC appoints the interim chair (should not be a staff person) of the SDT. The SDT will elect the permanent Chair and Vice-chair at its first meeting.

The SPM submits the proposed list of names of the SDT to the SC. The SC will either accept the recommendations of the SPM or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

Upon approval of the SDT slate, the SC will declare a preliminary date on which the SDT is expected to have ready a completed draft Standard and associated supporting documentation available for consideration by the ReliabilityFirst membership.

### ***Step 3 – Work and Work Product of the Standard Drafting Team***

The SDT will then develop a work plan for completing the Standard development work, including the establishment of milestones for completing critical elements of the work in sufficient detail to ensure that the SDT will meet the date objective established by the SC

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or the SDT shall propose an alternative date. This plan is then delivered to the SC for its concurrence.

The SDT is to meet, either in person or via electronic means as necessary, establish sub-work teams (made up of members of the SDT) as necessary, and performs other activities to address the parameters of the SAR and the milestone date(s) established by the SC.

The work product of the SDT will consist of the following:

- A draft Standard consistent with the SAR on which it was based.
- An assessment of the impact of the SAR on neighboring regions, and appropriate input from the neighboring regions if the SAR is determined to impact any neighboring region.
- An implementation plan, including the nature, extent and duration of field-testing, if any.
- Identification of any existing Standard that will be deleted, in part or whole, or otherwise impacted by the implementation of the draft Standard.
- Technical reports, white papers and/or work papers that provide technical support for the draft Standard under consideration.
- Document the perceived reliability impact should the Standard be approved.

Upon completion of these tasks, the SDT submits these documents to the SC, which will verify that the proposed Standard is consistent with the SAR on which it was developed

The SDT regularly (at least once each month) informs the SC of its progress in meeting a timely completion of the draft Standard. The SDT may request of the SC scope changes of the SAR at any point in the Standard development process.

The SC may, at any time, exercise its authority over the Standards development process by directing the SDT to move to Step 4 and post for comment the current work product. If there are competing drafts, the SC may, at its sole discretion, have posted the version(s) of the draft Standard for comment on the *ReliabilityFirst* website. The SC may take this step at any time after a SDT has been commissioned to develop the Standard.

#### **Step 4 – *Comment Posting Period***

At the direction from the SC, the SPM then facilitates the posting of the draft Standard on the *ReliabilityFirst* website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The SPM shall also inform *ReliabilityFirst* Members and other potentially interested entities inside or outside of *ReliabilityFirst* of the posting using typical membership communication procedures then currently in effect or by other means as deemed appropriate. As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The Ballot Pool category description and associated requirements are in Appendix D.

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Within 30 days of the conclusion of 30-day comment posting period the SDT shall convene and consider changes to the draft Standard, the implementation plan and/or supporting technical documents based upon comments received. Based upon these comments, the SDT may elect to return to step 3 to revise the draft Standard, implementation plan and/or supporting technical documentation.

The SDT shall prepare a “modification report” summarizing the comments received and the changes made as a result of these comments. The modification report also summarizes comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. Responses to all comments will be posted on the ReliabilityFirst website no later than the next posting of the proposed Standard.

### **Step 5 – Posting for Voting by ReliabilityFirst Registered Ballot Body**

Upon recommendation of the SDT, and if the SC concurs that all of the requirements for development of the Standard have been met, the SPM will post the revised draft Standard, implementation plan, supporting technical documentation and the “modification report”. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

Entities may register in the BB at any time during the Standards process. The BB category description and associated rules are in Appendix D.

By 11:59 PM Central Prevailing Time (CPT) of the seventh day of the 15 day pre ballot posting period, registered BB entities intending to vote on the proposed standard must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The SPM will schedule a Vote by the Ballot Pool which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting. The Vote by the Ballot Pool is an advisory to the ReliabilityFirst Board.

The Ballot Pool shall be allowed to vote over a period of 15 days. It is expected that votes will be submitted electronically, but may be submitted through other means as approved by the SC.

All entities registered as part of the BB are eligible to participate in voting on proposed new Standards, Standard revisions or Standard deletions. There is a requirement to separately join a Ballot Pool to participate in voting for each standard. Each entity can join only in one category of the Ballot Pool and shall have one vote.

The voting results will be composed of only the votes from BB entities that have joined the Ballot Pool for the standard being voted on and responding within the 15 day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the ReliabilityFirst website prior to going to the SC or Board.

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### **Step 6A – Voting Receives Simple Majority of Affirmative Category Votes**

A simple majority<sup>3</sup> of votes within a category determines the vote for that category. If there is a simple affirmative majority of category votes (only those categories with votes cast will be considered) during the 15-day voting period and a quorum is met (a quorum consists of a simple majority of individuals who have joined the Ballot Pool), the SC will forward the Standard to the Reliability*First* Board for action (Step 7).

### **Step 6B – Voting Does Not Receive Simple Majority of Affirmative Category Votes or a Quorum is Not Met**

If a draft Standard does not receive a simple affirmative majority of votes determined for each category (only those categories with votes cast will be considered) during the 15-day voting period or a quorum is not met during the 15-day voting period, the SC may:

- Direct the existing SDT to reconsider or modify certain aspects of the draft Standard and/or implementation plan. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The SC may require a second comment period prior to the second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.
  - If there is a simple affirmative majority of categories with votes cast and a quorum is met during the second voting period, the SC will forward it to the Reliability*First* Board for action (Step 7).
  - If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the Reliability*First* Board. The SC may also submit an assessment, opinion and recommendations to the Reliability*First* Board (Step 7).
- Revise the SAR on which the draft Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The SC may require a second comment period prior to a second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.
  - If there is a simple affirmative majority of categories with votes cast during the second voting period and a quorum is met, the SC will forward it to the Reliability*First* Board for action (Step 7).

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<sup>3</sup> For the purposes of determining majority within a category, an abstention is not considered a vote. Board Approval December 6<sup>th</sup>, 2007



- If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the ReliabilityFirst Board. The SC may also submit an assessment, opinion and recommendations to the ReliabilityFirst Board (Step 7).
- Recommend termination of all work on the development of the Standard action under consideration and so notify the ReliabilityFirst Board.

***Step 7 – Action by the ReliabilityFirst Board***

A draft Standard submitted to the ReliabilityFirst Board for action must be publicly posted at least 30 days prior to action by the Board. At a regular or special meeting, the ReliabilityFirst Board shall consider adoption of the draft Standard. The Board will consider the results of the voting and dissenting opinions. The Board will consider any advice offered by the SC.

Draft Standards that received a simple affirmative majority of categories with votes cast shall be delivered to the ReliabilityFirst Board for their action. The ReliabilityFirst Board shall be provided with an “informational package” which includes:

- The draft Standard and any modification or deletion of other related existing Standard(s)
- Implementation Plan (including recommending field testing and effective dates)
- Technical Documentation supporting the draft Standard
- A summary of the vote and summary of the comments and responses that accompanied the votes.

The ReliabilityFirst Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.
- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

Draft Standards that did not receive a simple affirmative majority of categories with votes cast in the second voting period shall be delivered to the ReliabilityFirst Board for their action. The ReliabilityFirst Board shall be provided with an “informational package”.

The ReliabilityFirst Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.

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- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

Once a regional Reliability*First* Standard is approved by the Board, the standard will be submitted to NERC for approval and filing with FERC.

***Step 8 - Implementation of a Regional Reliability Standard***

Upon approval of a draft Standard action by FERC, the SPM will notify the membership of the effective date through the normal and customary membership communication procedures and processes then in effect. The SPM will also notify the Reliability*First* Compliance Staff for integration into the Reliability*First* Compliance Program.

## **Appendix A**

### **Maintenance of Regional Reliability Standards Development Process**

Significant changes to this Procedure shall begin with the preparation of a SAR and be handled using the same procedure as a request to add, modify, or delete a Standard.

The Reliability*First* SC has the authority to make ‘minor’ changes to this Procedure as deemed appropriate by the SC and subject to the SC voting practices and procedures according to the “Reliability*First* Standards Committee Governance” document then in effect. The SC shall promptly notify the Reliability*First* Board of such ‘minor’ changes to this Procedure for their review and concurrence at the next Reliability*First* Board meeting.

### **Maintenance of Regional Reliability Standards**

The SC shall ensure that each Standard shall be reviewed at least once every five years from the effective date of the Standard or the latest revision to the Standard, whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the SC shall recommend to the Reliability*First* Board that the Standard be reaffirmed. If the review indicates a need to revise or delete a Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this Procedure.

### **Urgent Action**

Under certain conditions, the SC may designate a proposed Standard or revision to a Standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed Standard or revision could materially impact reliability of the BPS. The SC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a Standard.

A requester prepares a SAR and a draft of the proposed Standard and submits both to the SPM. The SAR must include a justification for urgent action. The SPM submits the request to the SC for its consideration. If the SC designates the requested Standard or revision as an urgent action item, then the SPM shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 5. Processing will continue as outlined in the subsequent steps. In the event additional drafting is required, a SDT will be assembled as outlined in the Procedure.

Any Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the Standard permanent, then the Standard would be required to go through the full Standard

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development process. All urgent action Standards require ReliabilityFirst Board, NERC and FERC approval, as outlined for Standards in the regular process.

Urgent actions that expire may be renewed using the urgent action process again, in the event a permanent Standard is not adopted. In determining whether to authorize an urgent action Standard for a renewal ballot, the SC shall consider the impact of the Standard on the reliability of the BPS and whether expeditious progress is being made toward a permanent replacement Standard. The SC shall not authorize a renewal ballot if there is insufficient progress toward adopting a permanent replacement Standard or if the SC lacks confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action Standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement Standard. With these principles, there is no predetermined limit on the number of times an urgent action may be renewed. However, each urgent action Standard renewal shall be effective only upon approval by the ReliabilityFirst Board, NERC and FERC.

Any person or entity, including the SDT working on a permanent replacement Standard, may at any time submit a SAR proposing that an urgent action Standard become a permanent Standard by following the full Standards process.

### **Interpretations of Standards**

All persons who are directly and materially affected by the reliability of ReliabilityFirst BPS shall be permitted to request an interpretation of the standard. The person requesting an interpretation will send a request to the SPM explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard.

The SPM, along with guidance from the SC, will assemble a team with the relevant expertise to address the request. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The SPM submits the proposed list of names of the IDT to the SC. The SC will either accept the recommendations of the SPM or modify the IDT slate.

As soon as practical (not more than 45 days), the team will draft a written interpretation to the standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Standard addressing only the issues raised, the team will forward the draft interpretation to the SPM. The SPM will forward the draft interpretation to the Interim Compliance Committee (ICC). The ICC is to assess if the inclusion of the interpretation lessens the measurability of the Standard. In addition, the SPM will forward the interpretation to the Reliability Committee (RC). Barring receipt of an opinion from either the ICC or RC within 21 calendar days, that the interpretation sufficiently lessens measurability or is not technically appropriate for the Standard, respectively, the SPM will forward the interpretation to the SC. The SC will determine if

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the interpretation is consistent with the Standard. The SC will forward the interpretation to the Reliability *First* Board for informational purposes as being appended to the approved Standard.

Note: In the event that the ICC determines that measurability is lessened, the ICC shall provide an explanation of its reasoning to the SPM and IDT for inclusion in a subsequent revision. The RC shall in a similar manner provide an explanation of its reasoning if it determines that the interpretation makes the standard technically inappropriate. In either case, the IDT and SPM will continue to re-circulate the interpretation as stated above.

The interpretation will stand until such time as the standard is revised through the normal process, at which time the standard will be modified to incorporate the clarifications provided by the interpretation.

## **Appeals**

Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a Standard shall have the right to appeal. This appeals process applies only to the Standards process as defined in this Procedure.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

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

### ***Level 1 Appeal***

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the SPM that describes the substantive or procedural action or inaction associated with a Standard or the standards process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the SPM shall prepare a written response addressed to the appellant as soon as practical but not more than 45-days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the standard.

### ***Level 2 Appeal***

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If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the SPM, the SPM shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by the Reliability*First* Board.

In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The SPM shall post the complaint and other relevant materials and provide at least 30-days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the SC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a reliability standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to the Reliability*First* Board for consideration at the time the Board decides whether to adopt a particular reliability standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30-days after the announcement of the vote on the Standard in question.

## Appendix B

### Standard Authorization Request

The SC shall be responsible for implementing and maintaining this form as needed to support the information requirements of the standards development process in this Procedure. Changes to this form are considered minor, and therefore subject to only the approval of the SC.

#### ReliabilityFirst Standard Authorization Request Form

**ReliabilityFirst  
will complete**

Title of Proposed Standard
Request Date

ID
Authorized for Posting
Authorized for Development

#### *SAR Originator Information*

Name	<b>SAR Type</b> (Check box for one of these selections.)	
Company	<input type="checkbox"/>	New Standard
Telephone	<input type="checkbox"/>	Revision to Existing Standard
Fax	<input type="checkbox"/>	Withdrawal of Existing Standard
E-mail	<input type="checkbox"/>	Urgent Action

**Purpose** (Provide one or two sentences.)

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**Industry Need** (Provide one or two sentences.)

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**Brief Description** (A few sentences or a paragraph.)

***Reliability Functions***

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

	Reliability Authority	Ensures the reliability of the bulk transmission system within its Reliability Authority area. This is the highest reliability authority.
	Balancing Authority	Integrates resource plans ahead of time, and maintains load-interchange-resource balance within its metered boundary and supports system frequency in real time
	Generator Owner	Owns and maintains generating units
	Interchange Authority	Authorizes valid and balanced Interchange Schedules
	Planning Authority	Plans the BPS
	Resource Planner	Develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area
	Transmission Planner	Develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area
	Transmission Service Provider	Provides transmission services to qualified market participants under applicable transmission service agreements
	Transmission Owner	Owns transmission facilities
	Transmission Operator	Operates and maintains the transmission facilities, and executes switching orders
	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer

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	Generator Operator	Operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services
	Purchasing-Selling Entity	The function of purchasing or selling energy, capacity and all necessary Interconnected Operations Services as required
	Load-Serving Entity	Secures energy and transmission (and related generation services) to serve the end user
	Market Operator	Integrates energy, capacity, balancing, and transmission resources to achieve an economic, reliability-constrained dispatch of resources. The dispatch may be either cost-based or bid-based
	Regional Reliability Organizations	An entity that ensures that a defined area of the BPS is reliable, adequate and secure. A member of the North American Electric Reliability Council. The Regional Reliability Organization can serve as the Compliance Monitor

NOTE: The SDT may find it necessary to modify the initial reliability function responsibility assignment as a result of the standards development and comments received.

*Reliability Principles*

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

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*Market Interface Principles*

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

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***Detailed Description*** (Provide enough detail so that an independent entity familiar with the industry could draft a Standard based on this description.)

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**Related Standards (NERC and Regional)**

Standard No.	Explanation

***Related SARs***

SAR ID	Explanation

### **Implementation Plan**

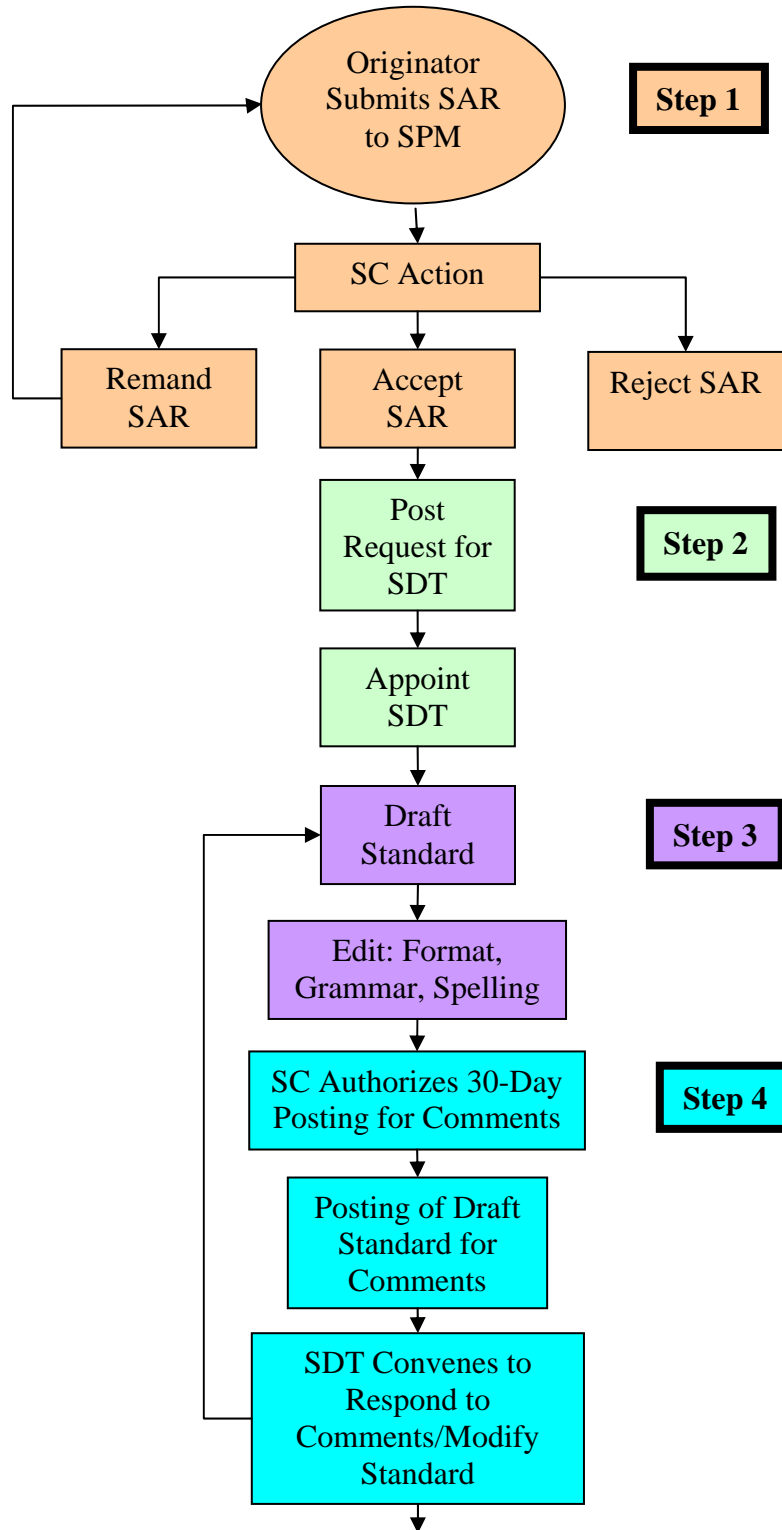
<p><b>Description</b> (<i>Provide plans for the implementation of the proposed standard, including any known systems or training requirements. Include the reliability risk(s) associated with the violation that the standard will mitigate, and the costs associated with implementation.</i>)</p>
<p><b>Proposed Implementation</b>                      <b>days after Board adoption or</b></p> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <p><b>on (date):</b></p>

#### **Assignments**

	<i>Assignment</i>
<b>Team Members</b>	
<b>ReliabilityFirst Staff</b>	

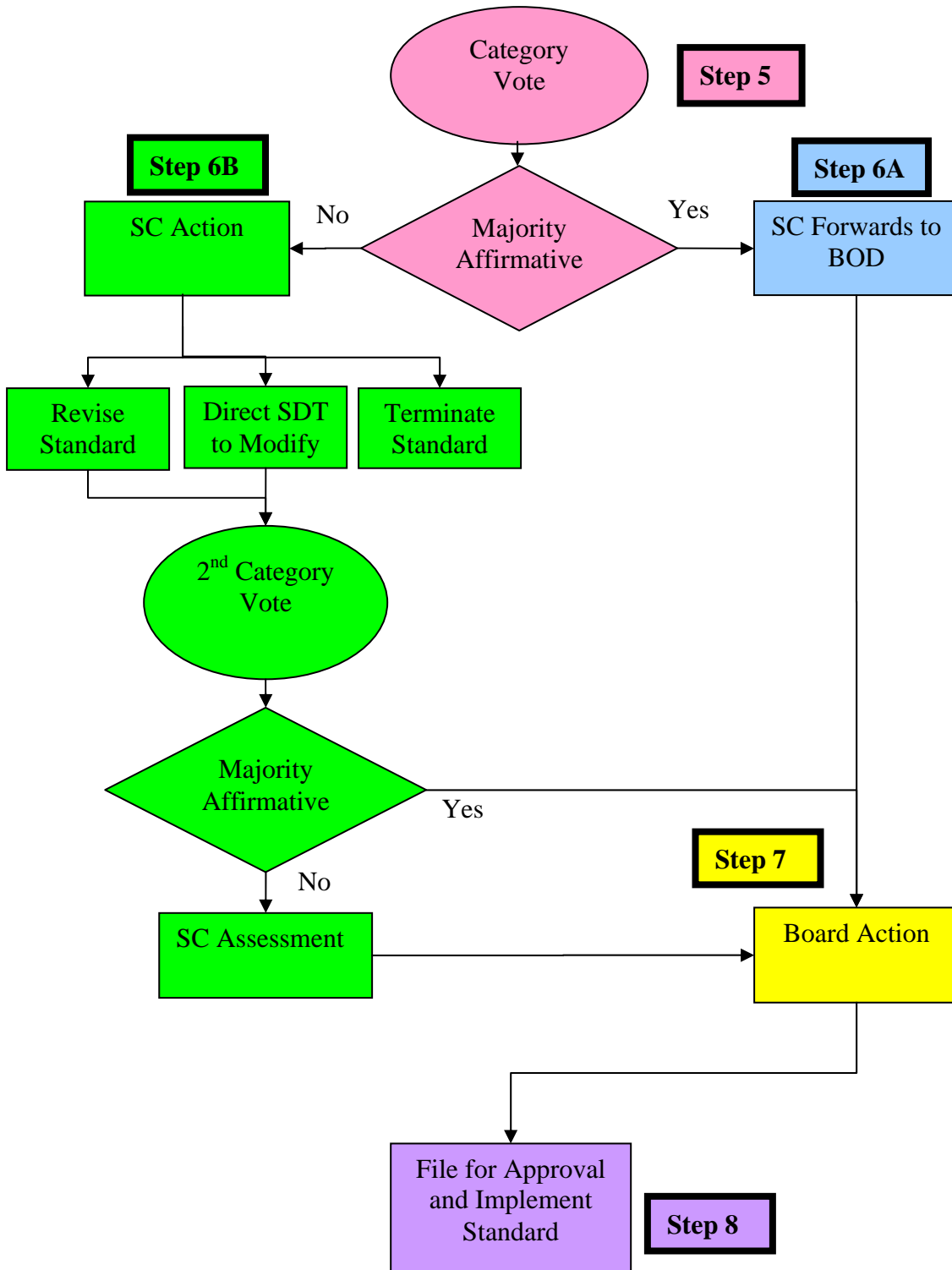
## Appendix C

### Flowchart for Standards Process



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## **Appendix D**

### **Ballot Pool Categories**

For the purposes of category Ballot Pool registration and voting, an entity shall register in only one of the following categories for each standard that will be voted on (only one vote is allowed per entity per vote):

Category 1 – Transmission Owner, Transmission Operator, Transmission Service Provider

Category 2 – Generator Owner, Generator Operator

Category 3 – Load Serving Entity, Purchasing and Selling Entity, End User

Category 4 – Reliability Coordinator, Planning Coordinator, Transmission Planner, Resource Planner, Regional Transmission Organization, Balancing Authority, regulatory or governmental agency

Category 5 – Distribution Provider

### **Ballot Body Registration**

Entities may register in the BB at any time during the Standards process. The SPM shall review all applications for joining the BB, and make a determination of whether they qualify for the self-selection category(ies). In order to comment or vote you must have an active membership in the BB. When you submit your registration request to join the BB, you are placed in a “pending stage” until your account is activated. Activation of your account may take up to 24 hours. You will be unable to submit comments or join a Ballot Pool until your account is activated. The contact designated as primary representative to ReliabilityFirst is the voting member with the secondary contact as the backup.

Note: Registration for a BB is not the same as registration for the compliance registry. Although the terminology used to describe the BB categories in most cases has the same meaning as the terms used in the NERC Functional Model, registration in a BB goes beyond the compliance registry in that entities smaller than those stated in the compliance registry guidelines are allowed to register in a BB. Entities shall have evidence that they qualify for the BB category they register in. Such evidence shall be available for the SPM review to verify BB registration and may include compliance registration.

### **Ballot Pool Formation**

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In order to participate in voting on a particular standard, an entity must join the Ballot Pool being established for the standard as follows:

1 – As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

2 - By close of business of the seventh day of the 15 day pre ballot posting period, entities wishing to vote must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

## EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

### 1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.1 Obligations of ReliabilityFirst Corporation

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

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

ReliabilityFirst has adopted the pro forma compliance program without exception, as revised by NERC.

ReliabilityFirst has adopted the Attachment 2 Uniform Eastern Interconnection Hearing Process with the following exceptions:

- a. The ReliabilityFirst Hearing Procedure ~~allows~~ allows members of the Hearing Body to introduce information to the proceeding upon Motion, at their discretion. ~~The members of the ReliabilityFirst Compliance Committee, from which the Hearing Body is drawn, may have unique expertise, knowledge and experience and may be able to contribute useful background information and documentation to the hearing procedure decision process. The ReliabilityFirst Hearing Procedure provides that any hearing participant may object to the introduction of evidence by the Hearing Body and seek to submit its own evidence in response to the information or documents offered by the Hearing Body. A decision to deny the responsive evidence or admit evidence over objection is to be explained in the hearing record.~~
- ~~b. ReliabilityFirst has incorporated the clarified definition of "Critical Energy Infrastructure Information" as issued by FERC in Order No. 683 on September 21, 2006.~~
- ~~e.b.~~ Whereas NERC adopts the generally recognized rules of evidence, the ReliabilityFirst Hearing Procedure ~~allows~~ does not incorporate the generally recognized rules of evidence but rather allows our Hearing Officer to exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and the evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. ReliabilityFirst believes that allowing a degree of freedom in the introduction of evidence in the Hearing Procedure allows for the most expeditious, thorough and just proceeding. Furthermore, such an evidentiary policy

provides all participants the opportunity to submit all relevant facts and evidence for consideration by the Hearing Officer and Hearing Body in order to promote a fair and impartial proceeding that includes all of the relevant facts and completes an inclusive record to serve as a basis for a correct and legally sustainable ruling, decision or order that promotes and advances real-world reliability.

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

ReliabilityFirst shall establish ~~and maintain~~ a hearing body with authority to conduct and render decisions in a formal compliance hearing in which of a Registered Entity ~~may contest a finding who is the subject~~ of a notice of alleged violation, proposed penalty or sanction, ~~or a proposed contested~~ mitigation plan or contested remedial action directive. ReliabilityFirst's hearing body ~~generally will be~~ is the Board Compliance Committee (CC), which is a ~~sub-committee~~ portion of the full Board of Directors. The CC is comprised of five (5) Directors, three (3) of which are independent Board of Director members, and two (2) that are stakeholder Board of Director members. For the Hearing Body to take action at a hearing, a quorum must be present. A quorum is a majority of the members of the Hearing Body, provided that at least two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present. A majority of the independent Board of Directors, two (2), must be present for a quorum of the CC to be established.

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

There are no other decision-making bodies within the ReliabilityFirst organizational structure with regards to the compliance program. The Compliance Committee of the Board of Directors has been given the responsibility and authority to make all compliance program related decisions.



# COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

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## Compliance Monitoring and Enforcement Program

### COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

#### 1.0 INTRODUCTION

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

#### 1.1 Definitions

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

## Compliance Monitoring and Enforcement Program

- 1.1.9** Confirmed Violation: An Alleged Violation for which an entity has: 1) accepted the finding of the violation by ReliabilityFirst or NERC and will not seek an appeal, 2) completed the appeals process within NERC, or 3) allowed the time for submitting an appeal to NERC to expire.
- 1.1.10** Exception Reporting: Information provided to ReliabilityFirst by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a system operating limit has been exceeded). Some Reliability Standards require Exception Reporting.
- 1.1.11** Mitigation Plan: An action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent re-occurrence of the violation. A Mitigation Plan is required when a Registered Entity violates a Reliability Standard as determined by any means including a ReliabilityFirst decision, Settlement Agreement, or otherwise.
- 1.1.12** NERC Compliance Registry: A compilation of the Regional Compliance Registries from each Regional Entity plus the entities for which NERC serves as the Compliance Enforcement Authority.
- 1.1.13** NERC Compliance Monitoring and Enforcement Program Implementation Plan or NERC Implementation Plan: The annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to ReliabilityFirst in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.
- 1.1.14** Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to ReliabilityFirst on a time frame required by a Reliability Standard or an ad hoc basis.
- 1.1.15** ReliabilityFirst Compliance Registry: A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for the purpose of compliance within ReliabilityFirst's geographic footprint that perform one or more functions in support of reliability of the bulk power system. The Registry is used to determine the Reliability Standards applicable to the Registered Entity.
- 1.1.16** ReliabilityFirst Implementation Plan: An annual plan, submitted by November 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC



## Compliance Monitoring and Enforcement Program

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

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

## Compliance Monitoring and Enforcement Program

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

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

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

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

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. However, NERC will not provide non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to Applicable Governmental Authorities other than FERC without first obtaining permission from FERC for such disclosures and subject to such limitations as FERC may place on such disclosures. Similarly, during the course of compliance monitoring and enforcement activities relating to non-U.S. entities, NERC may obtain information that it will provide to the Applicable Governmental Authorities, including FERC, that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the information pertains, but subject to any limitations or restrictions placed on the disclosure of non-public, non-U.S. compliance information by the Applicable Governmental Authority with jurisdiction or by other law of the applicable jurisdiction.

### 3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

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

## Compliance Monitoring and Enforcement Program

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

~~Prior to reporting an Alleged Violations of Reliability Standards to NERC under Section 8.0, ReliabilityFirst may review the report of violation submitted to it by the Registered Entity, audit team, or others for accuracy and completeness. This may include a review of the applicability of the Reliability Standard(s) upon the Registered Entity, a review of the Registered Entity's actions or conduct in light of the particular Reliability Standard or requirement reported to have been violated, and a review of the functions performed by the Registered Entity and the function reported to have violated the Reliability Standard or requirement. Any corrections to the report of violation are to be made by ReliabilityFirst, and the Alleged Violation is to be reported to NERC if ReliabilityFirst has confirmed that the report contains evidence indicating the Registered Entity may have violated a Reliability Standard.~~

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

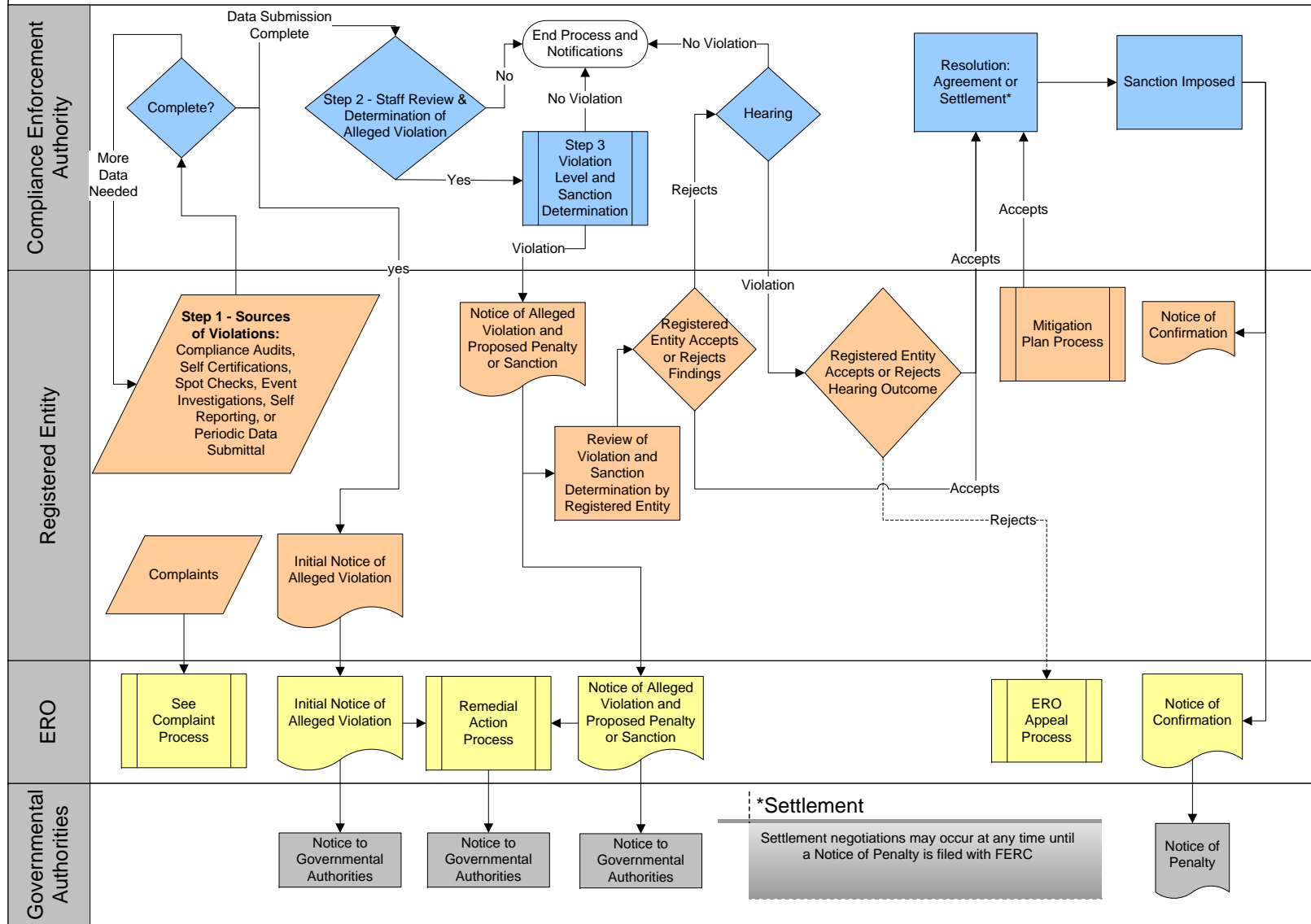
Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a party believes that a request for data or information is unreasonable, the party may request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

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

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

# Compliance Monitoring and Enforcement Program

## NERC Compliance Monitoring and Enforcement Program Overview



## Compliance Monitoring and Enforcement Program

### 3.1 Compliance Audits

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

#### 3.1.1 Compliance Audit Process Steps

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

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

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

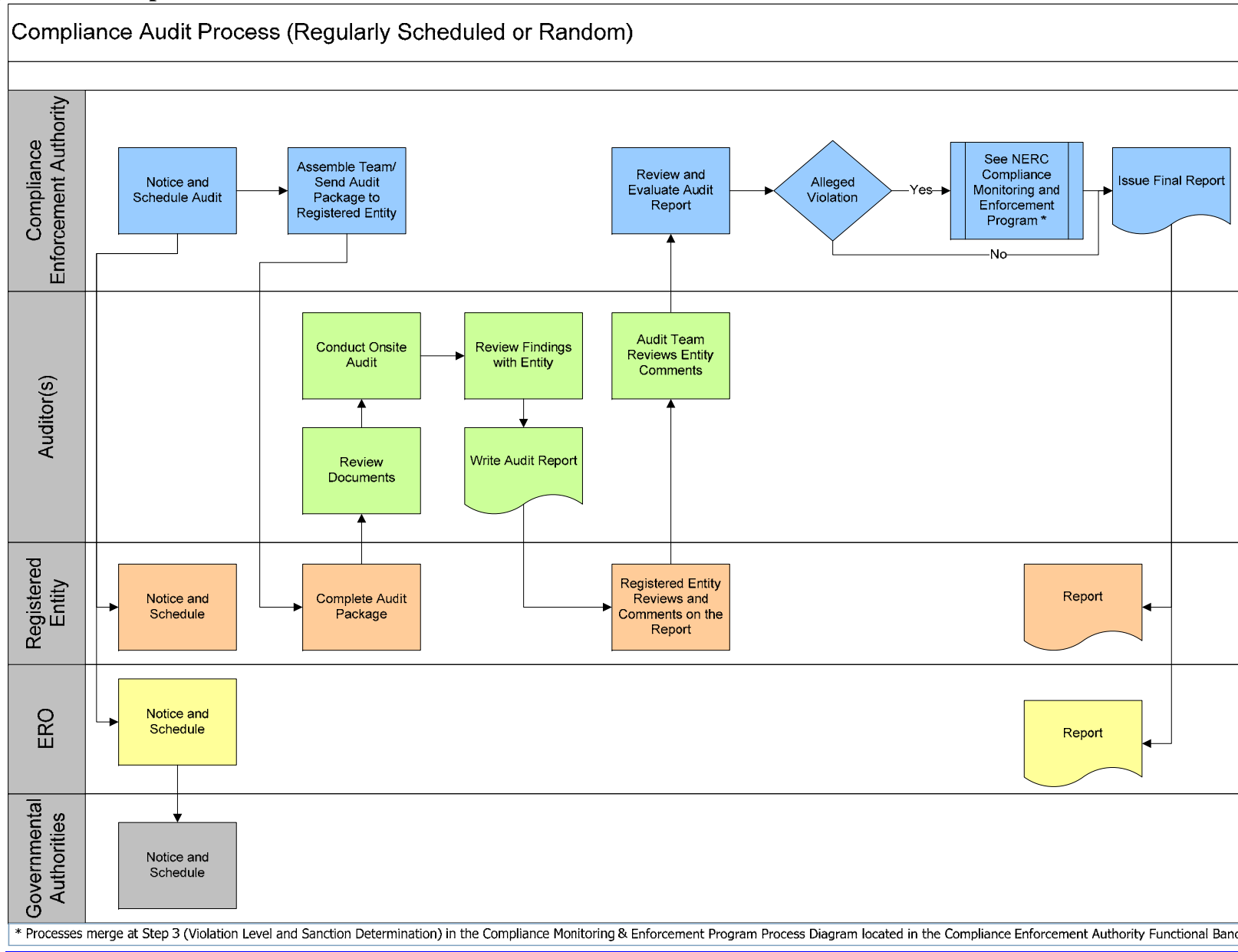
## Compliance Monitoring and Enforcement Program

audit report, including an assessment of compliance with the Reliability Standards, to ReliabilityFirst.

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

# Compliance Monitoring and Enforcement Program

## Figure 3.1 – Compliance Audit Process



## Compliance Monitoring and Enforcement Program

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

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

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

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

### 3.1.3 Frequency of Compliance Audits

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

### 3.1.4 Scope of Compliance Audits

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

### 3.1.5 Conduct of Compliance Audits

The audit team shall be comprised of staff personnel from ReliabilityFirst and may include contractors and industry volunteers as determined by ReliabilityFirst to be appropriate to comprise a sufficient audit team. The audit team leader shall be a staff member from ReliabilityFirst and is responsible for the conduct of the Compliance Audit and preparation of



## Compliance Monitoring and Enforcement Program

the audit report. At their discretion, NERC Compliance Staff may participate on any ReliabilityFirst Compliance Audit team either as an observer or as an audit team member as determined by ReliabilityFirst. Additionally, FERC and other regulatory bodies with regulatory authority for the Registered Entity may participate on the audit team for any Compliance Audit of a Registered Entity.

Each audit team member must:

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

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

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

### 3.1.6 Compliance Audit Reports

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

## Compliance Monitoring and Enforcement Program

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

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

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

### 3.2 Self-Certification

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

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

#### 3.2.1 Self-Certification Process Steps

## Compliance Monitoring and Enforcement Program

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

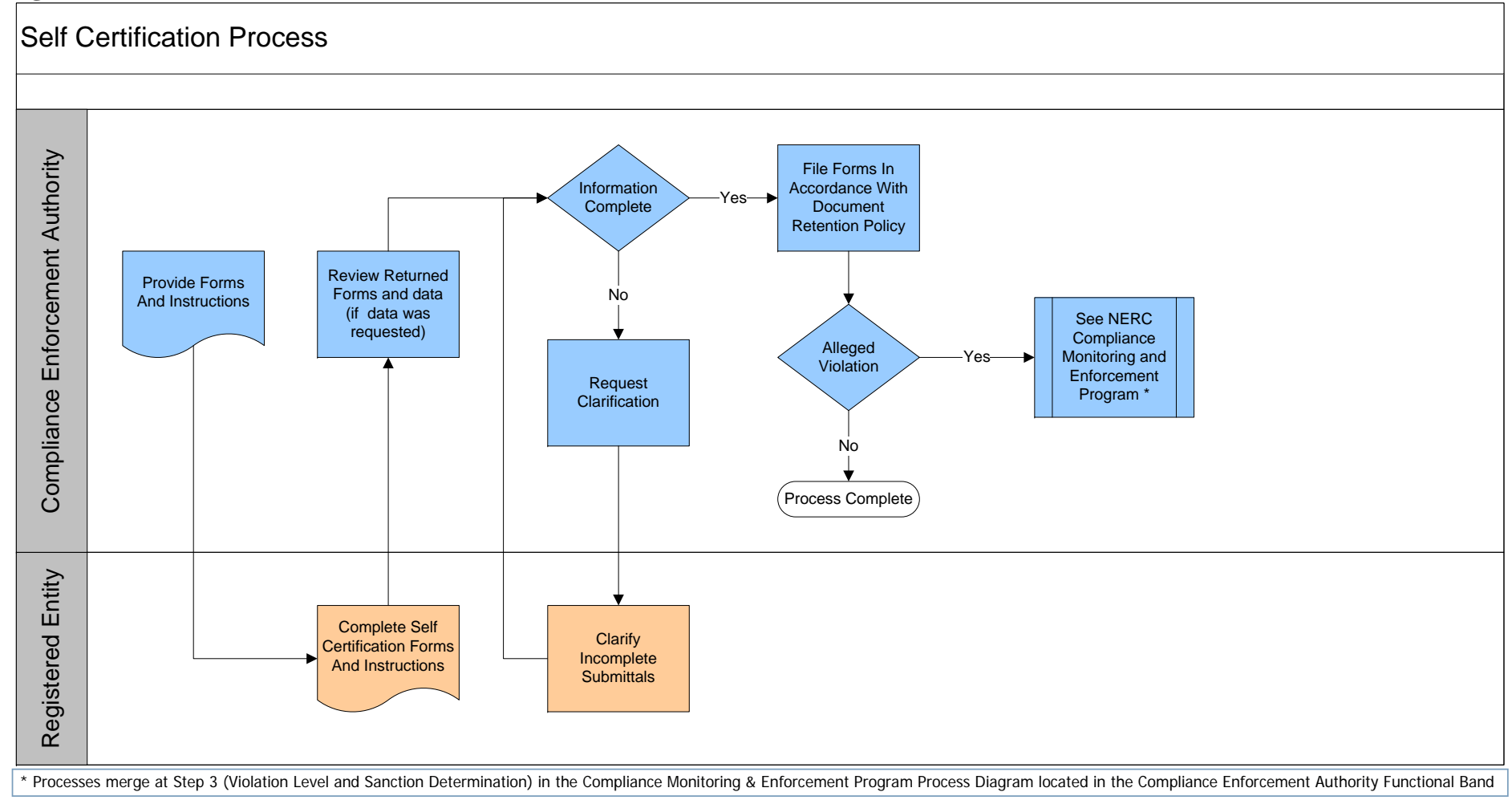
- ReliabilityFirst posts and updates the reporting schedule and informs Registered Entities. ReliabilityFirst ensures that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available electronically.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

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

# Compliance Monitoring and Enforcement Program

Figure 3.2.1 – Self Certification Process



## Compliance Monitoring and Enforcement Program

### 3.3 Spot Checking

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

#### 3.3.1 Spot Checking Process Steps

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

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

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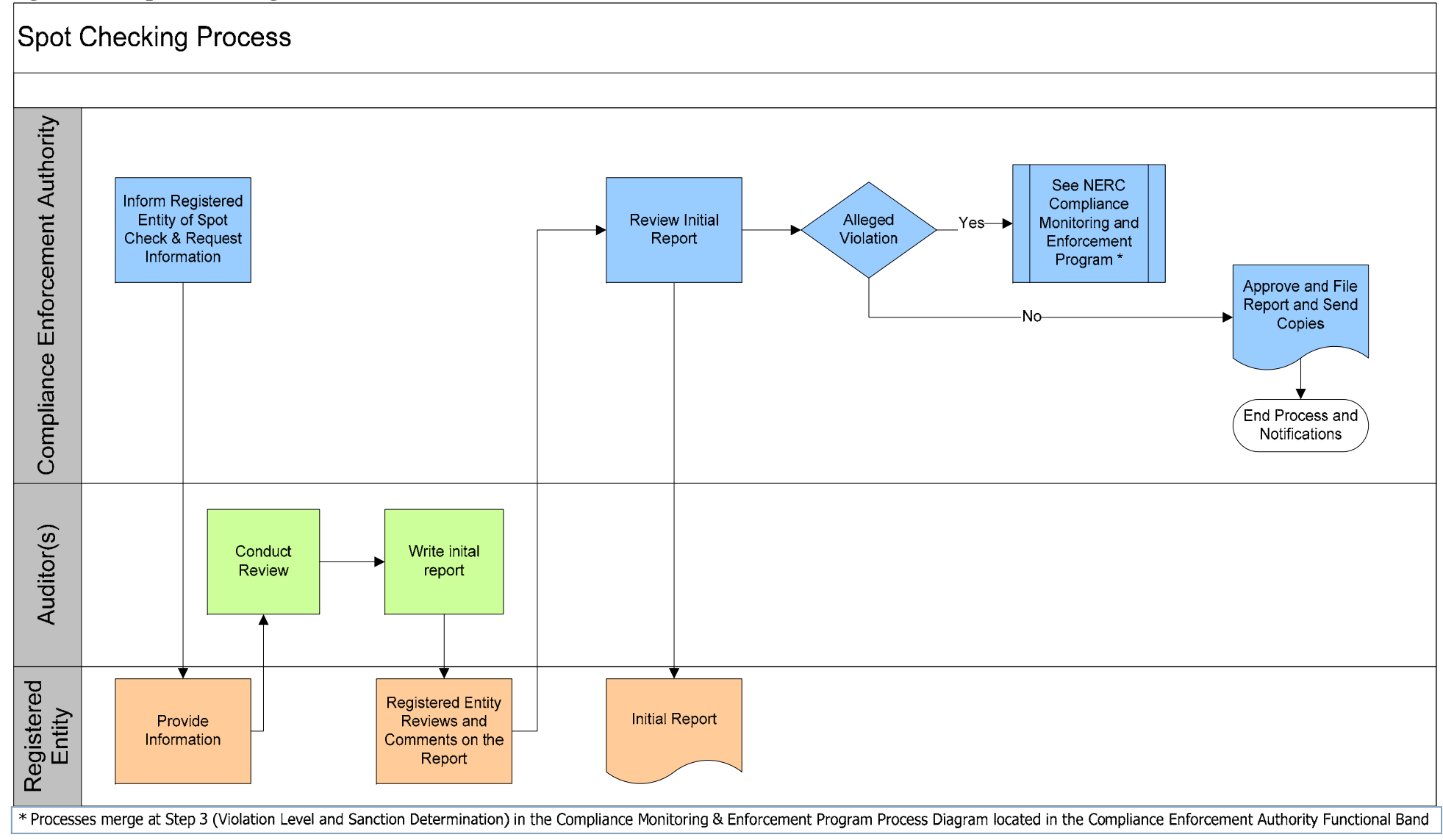
<sup>3</sup>If no alleged violations are found, this process normally completes within ninety (90) days of ReliabilityFirst's receipt of data.

## Compliance Monitoring and Enforcement Program

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

# Compliance Monitoring and Enforcement Program

Figure 3.3.1 Spot Checking Process



## Compliance Monitoring and Enforcement Program

### 3.4 Compliance Violation Investigations

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

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

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

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

#### 3.4.1 Compliance Violation Investigation Process Steps

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



## Compliance Monitoring and Enforcement Program

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

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

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

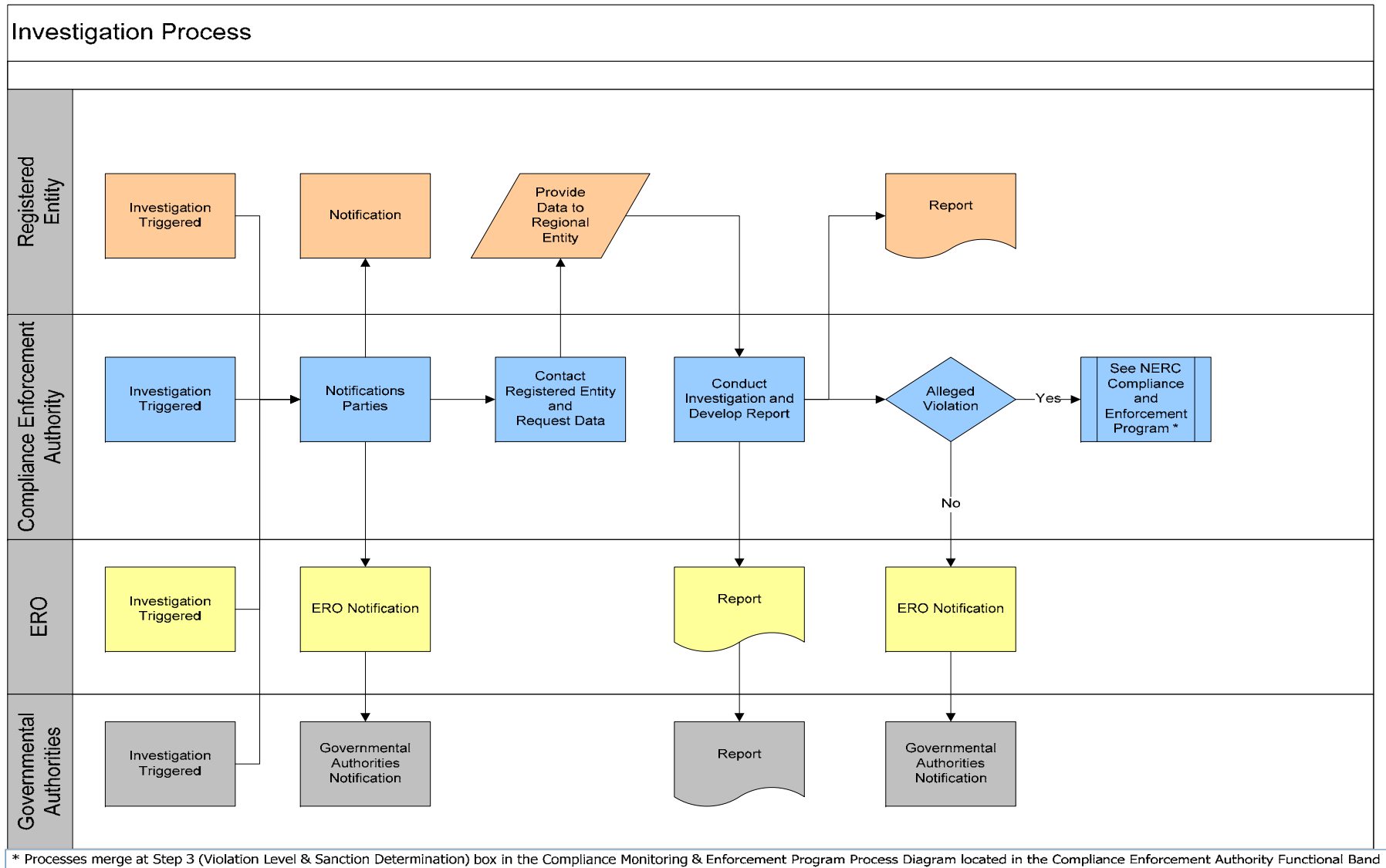
## Compliance Monitoring and Enforcement Program

circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to ReliabilityFirst within such ten (10) business day period. ReliabilityFirst will make a final determination as to whether the individual will participate in the investigation of the Registered Entity.

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

# Compliance Monitoring and Enforcement Program

Figure 3.4.1 – Compliance Violation Investigation Process



## Compliance Monitoring and Enforcement Program

### 3.5 Self-Reporting

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

#### 3.5.1 Self-Reporting Process Steps

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

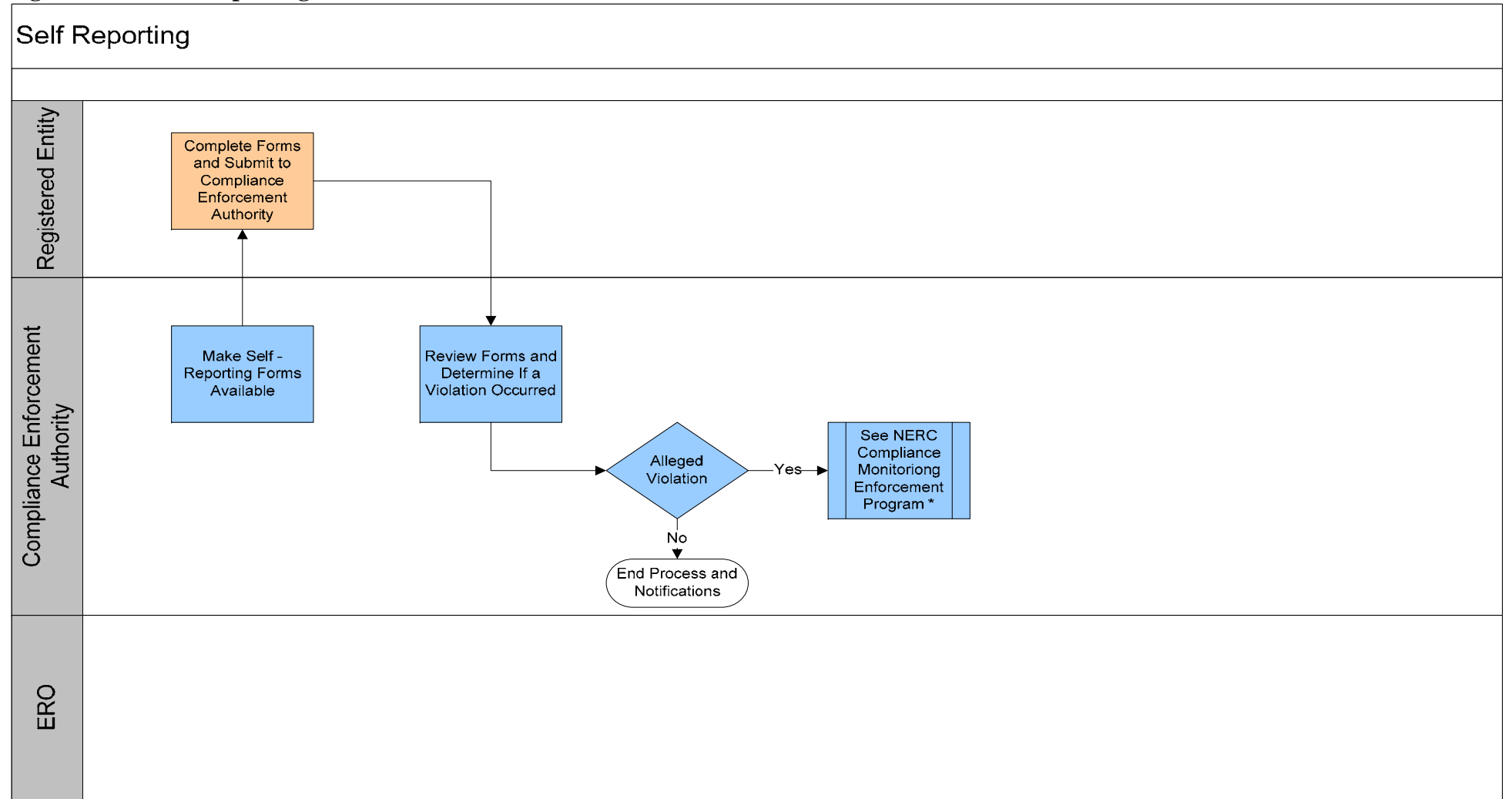
- ReliabilityFirst posts the Self-Reporting submittal forms and ensures they are maintained and available on its Web site.
- The Registered Entity provides the Self-Reporting information to ReliabilityFirst.
- ReliabilityFirst reviews the information to determine compliance with the Reliability Standards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

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

# Compliance Monitoring and Enforcement Program

Figure 3.5.1 – Self Reporting Process



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

## Compliance Monitoring and Enforcement Program

### 3.6 Periodic Data Submittals

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

#### 3.6.1 Periodic Data Submittals Process Steps

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

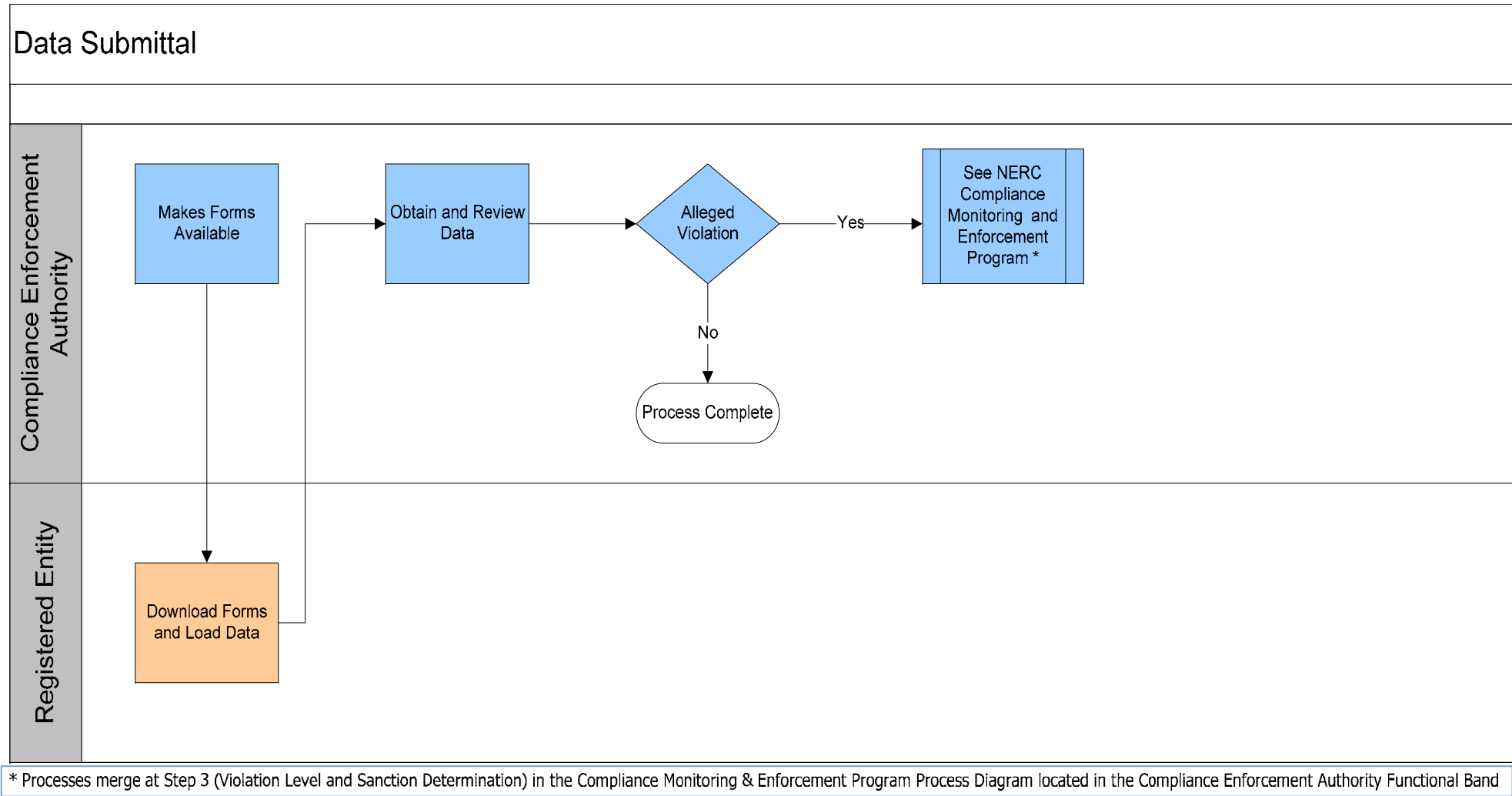
- ReliabilityFirst posts the current data reporting schedule on its web site and keeps Registered Entities informed of changes and/or updates. ReliabilityFirst ensures that the appropriate Reliability Standard compliance procedures and the required submittal forms for the Reliability Standards being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

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

## Compliance Monitoring and Enforcement Program

Figure 3.6.1 – Data Submittal Process



## Compliance Monitoring and Enforcement Program

### 3.7 Exception Reporting

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

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

### 3.8 Complaints

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

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

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

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

#### 3.8.1 Complaint Process Steps

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

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

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



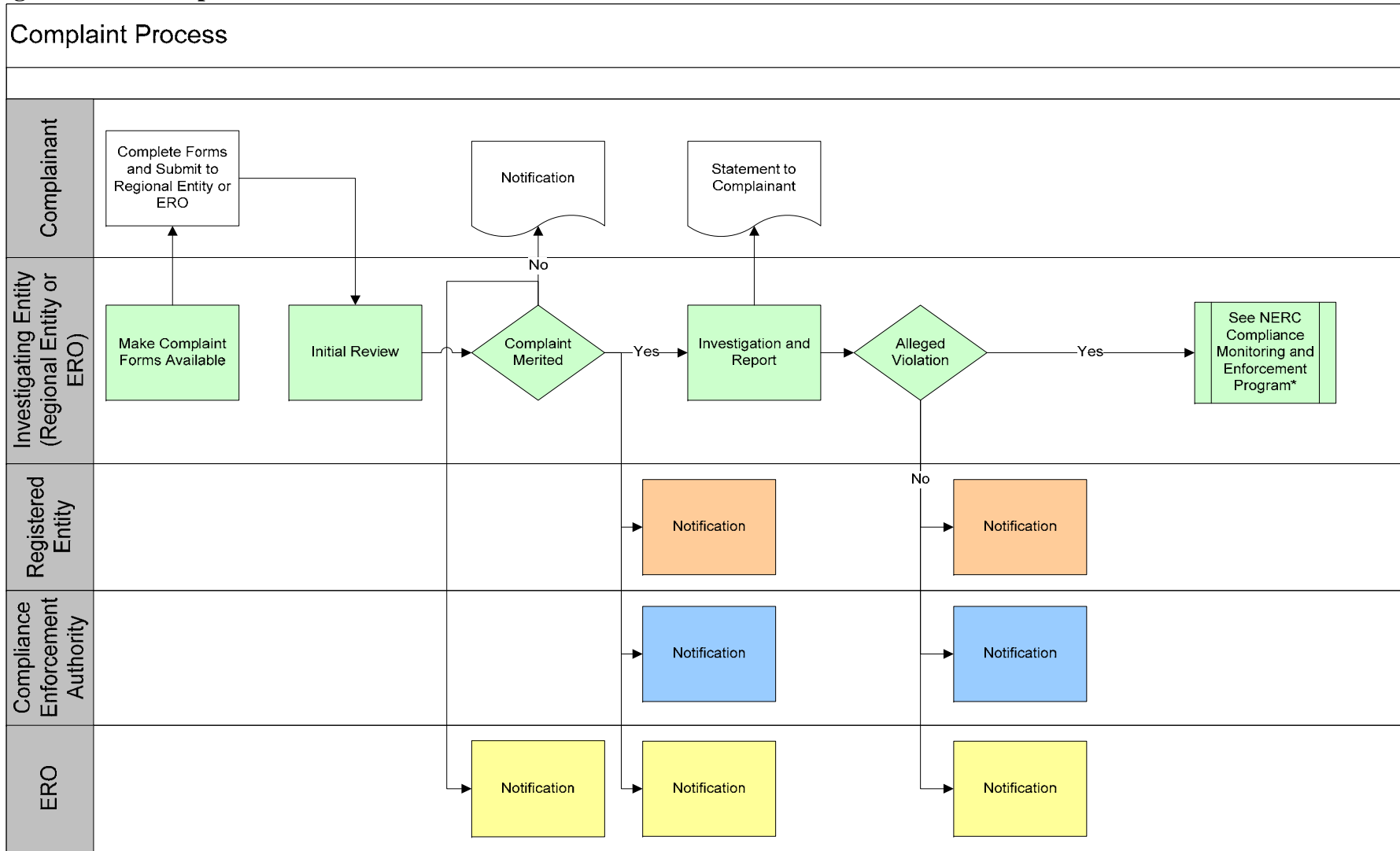
## Compliance Monitoring and Enforcement Program

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

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

# Compliance Monitoring and Enforcement Program

Figure 3.8.1 – Complaint Process



+ Anonymous complainant identities will be withheld

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

## Compliance Monitoring and Enforcement Program

### 3.8.2 Anonymous Complainant Notification Procedure

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

## 4.0 ANNUAL IMPLEMENTATION PLANS

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

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

### 4.2 ReliabilityFirst Implementation Plan

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

## 5.0 ENFORCEMENT ACTIONS

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

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

## Compliance Monitoring and Enforcement Program

requested by NERC concerning any penalty, sanction, or remedial actions imposed by the ReliabilityFirst.

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

### 5.1 Notification to Registered Entity of Alleged Violation

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

- (i) the Reliability Standard and requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts ReliabilityFirst believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed penalty or sanction, if any, determined by ReliabilityFirst to be applicable to the Alleged Violation in accordance with the NERC Sanction Guidelines, including an explanation of the basis on which the particular penalty or sanction was determined to be applicable,

~~(iv)~~(v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or ReliabilityFirst will deem the Registered Entity to have accepted the determination of violation and proposed penalty or sanction:

1. agree with the Alleged Violation and proposed penalty or sanction, and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.2, or

~~1.2.~~ agree to the Alleged Violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty or sanction, and may provide a response in accordance with Section 5.2, or

~~1.3.~~ contest both the Alleged Violation and proposed penalty or sanction,

- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed penalty or sanction;

## Compliance Monitoring and Enforcement Program

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

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

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

### 5.2 Registered Entity Response

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

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

## Compliance Monitoring and Enforcement Program

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

### 5.3 Hearing Process for Compliance Hearings

ReliabilityFirst hearing process is set forth in **Attachment 2**.

### 5.4 Settlement Process

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

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

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

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

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

## Compliance Monitoring and Enforcement Program

the settlement. ReliabilityFirst will issue a letter setting forth the final settlement terms including all penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Confirmed Violations are addressed in Section 8.0.

### 5.5 NERC Appeal Process

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

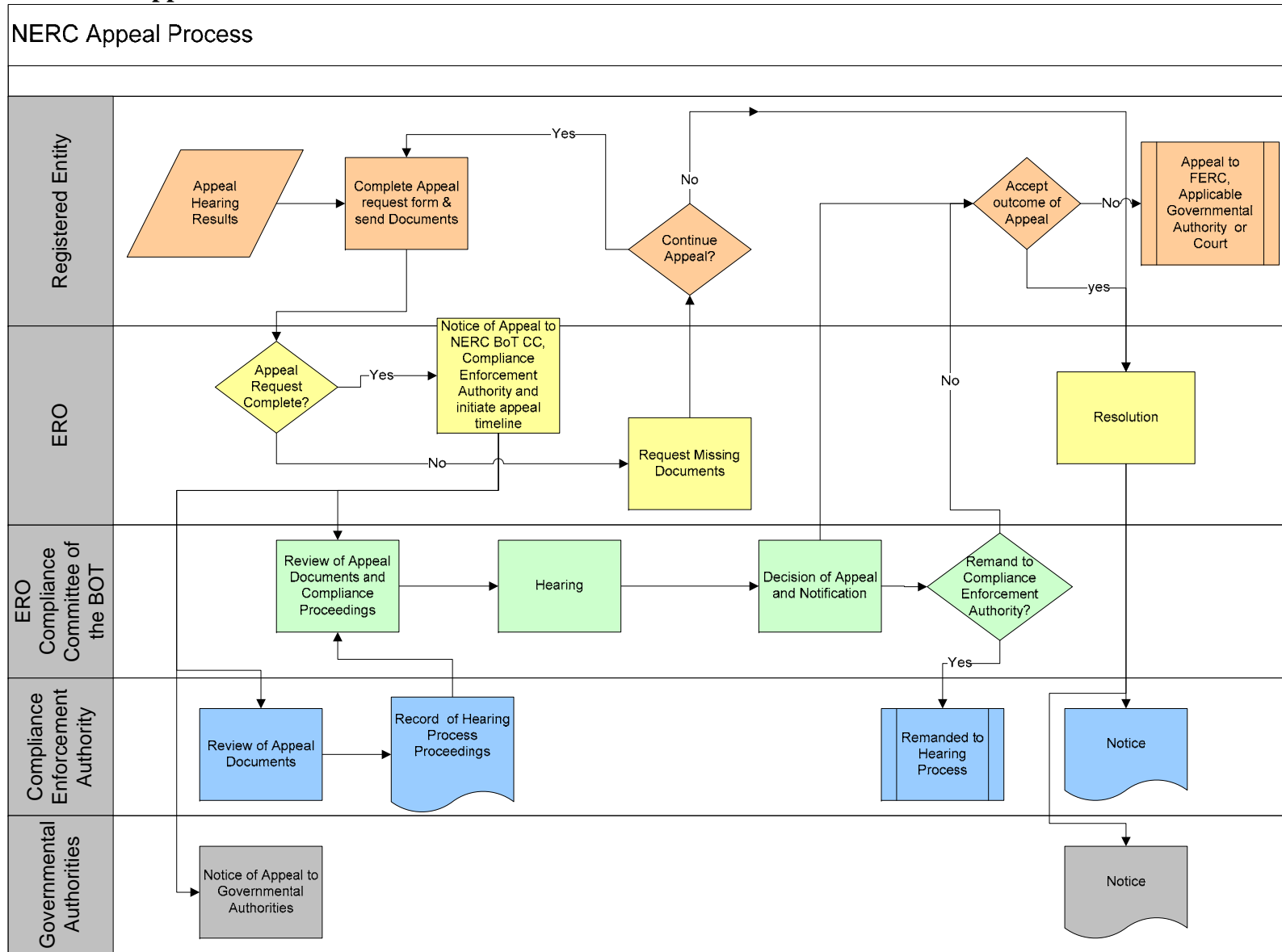
On appeal, NERC shall either affirm ReliabilityFirst's decision or remand to ReliabilityFirst with reasons for its ~~decision~~ remand, which may include a direction to ReliabilityFirst to revise the decision. If NERC directs ReliabilityFirst to revise its decision, the Registered Entity that was the subject of the decision or the Compliance Staff of ReliabilityFirst whose interests are adversely affected by the directed revision may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed. In addition, it may direct the ReliabilityFirst to revise a decision that clearly conflicts with the goal of consistent national reliability enforcement or where the requirement to revise the decision is necessary for NERC's oversight of ReliabilityFirst compliance activities, in which case any participant may reopen the proceedings on any issue

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

# Compliance Monitoring and Enforcement Program

Figure 5.5 – NERC Appeal Process





## Compliance Monitoring and Enforcement Program

### 5.6 Notice of Penalty

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

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

## 6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

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

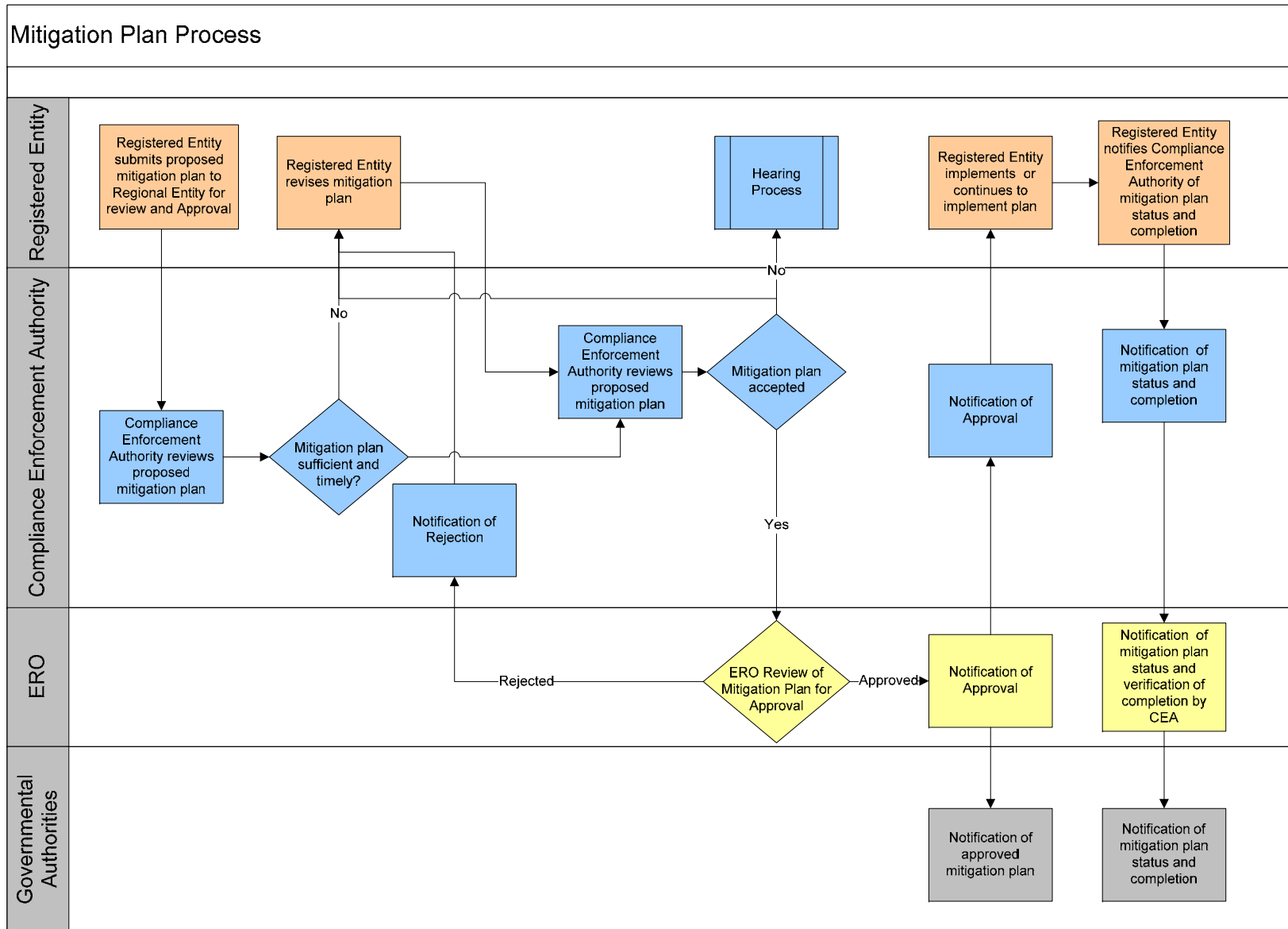
### 6.1 Requirement for Submission of Mitigation Plans

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

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

# Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process



## Compliance Monitoring and Enforcement Program

### 6.2 Contents of Mitigation Plans

A Mitigation Plan shall include the following information:

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

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

### 6.3 Timetable for Completion of Mitigation Plans

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

## **Compliance Monitoring and Enforcement Program**

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

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

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

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

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

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

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

## Compliance Monitoring and Enforcement Program

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

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

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

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

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

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by ReliabilityFirst. In addition,

## Compliance Monitoring and Enforcement Program

ReliabilityFirst may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

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

### 6.7 Recordkeeping

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

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

### 7.0 REMEDIAL ACTION DIRECTIVES

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

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

## Compliance Monitoring and Enforcement Program

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

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

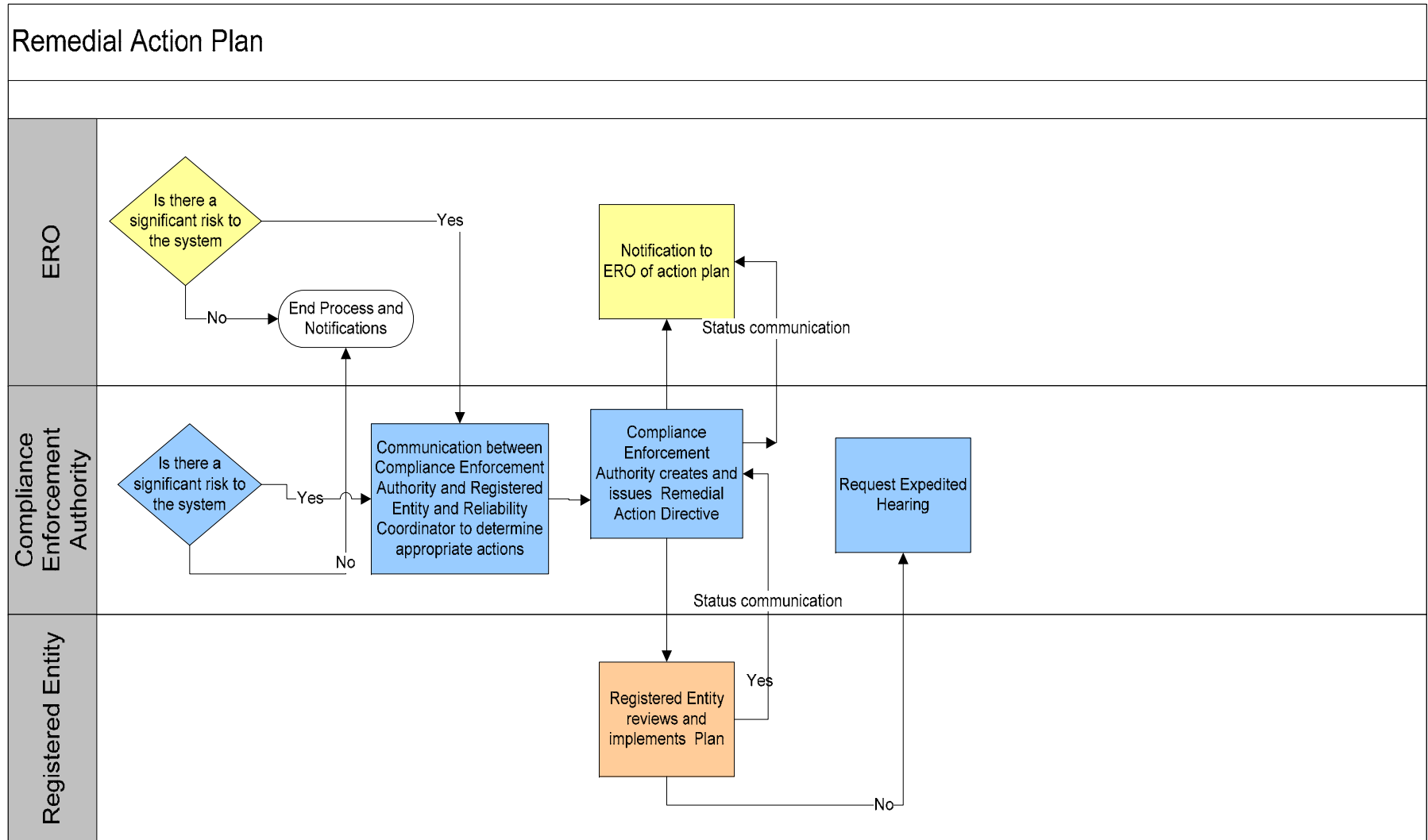
ReliabilityFirst will notify NERC within two (2) business days after issuing a Remedial Action Directive.

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

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

# Compliance Monitoring and Enforcement Program

Figure 7.0 – Remedial Action Process





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### 8.0 REPORTING AND DISCLOSURE

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

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

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

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

## Compliance Monitoring and Enforcement Program

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

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

## 9.0 DATA RETENTION AND CONFIDENTIALITY

### 9.1 Records Management

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

### 9.2 Retention Requirements

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

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

## **Compliance Monitoring and Enforcement Program**

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

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

#### **9.3.1 Definitions**

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

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

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

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

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

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

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

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

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

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

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

A full Compliance Audit may be scheduled at this step.

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

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

# Compliance Monitoring and Enforcement Program

## ATTACHMENT 2

### COMPLIANCE ENFORCEMENT AUTHORITY HEARING PROCEDURE<sup>2</sup>

See the ReliabilityFirst Hearing Procedure for details on the implementation of the ReliabilityFirst hearing process. Subject to the authority of the hearing body to alter or extend any time periods or deadlines specified in the ReliabilityFirst Hearing Procedure and to hold such numbers of conferences and hearings as are necessary, it shall be the objective of the hearing process to complete the steps specified herein for formal compliance hearings within ninety (90) days following the issuance of written notice that the hearing body is convened.

Figure ATT-2 shows the hearing procedure<sup>2</sup> steps.

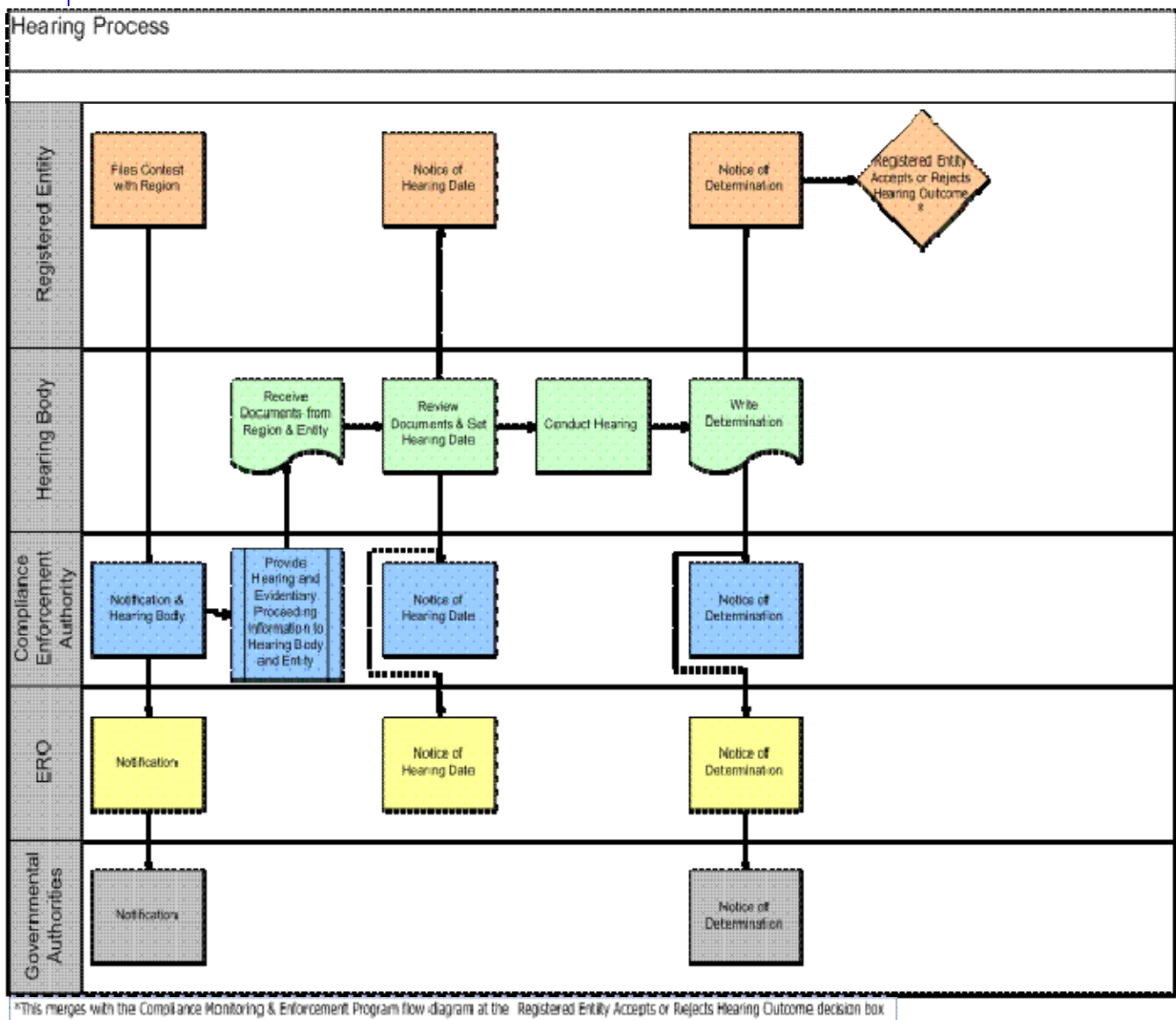


Figure ATT-2 –Hearing Procedure<sup>2</sup>



Marked for revisions for March 21  
FERC Order

**Hearing**

**Procedure**

~~October 16, 2007~~

Month, Date, 2008

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[October 16, 2007](#)

[Revised for July 21, 2008 Compliance Filing](#)



## Hearing Procedure

### 1.0 HEARING PROCEDURES

#### 1.1 Applicability, Definitions and Interpretation

##### 1.1.1 Procedure Governed

The provisions set forth ~~herein in this Paragraph 1.0 (“Hearing Procedure”)~~ shall apply to and govern practice and procedure before ReliabilityFirst in hearings in the United States conducted into (i) whether Registered Entities within ReliabilityFirst’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate mitigation plans as well as any remedial actions, penalties or sanctions in accordance with applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Body established by ReliabilityFirst. The composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, ~~any~~ decision by the Hearing Body on any matter brought before it for decision.

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

##### 1.1.2 Deviation

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

##### 1.1.3 Standards for Discretion

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

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

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

### 1.1.4 Interpretation

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

### 1.1.5 Definitions

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

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

“Clerk,” as designated by ReliabilityFirst.

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

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: ~~(i)(1)~~ relates details about the production, generation, transportation, transmission, or distribution of energy; ~~(ii)(2)~~ could be useful to a person in planning an attack on critical infrastructure; and ~~(iii)(3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4)~~ does not simply give the ~~general~~ location of the critical infrastructure.

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

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

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

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3, the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System subject to FERC review.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means a composition of members of the ReliabilityFirst Compliance Committee as established by the Board of Directors of ReliabilityFirst as set out in the ReliabilityFirst Compliance Committee Charter. No two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body either before or after any recusals or disqualifications in accordance with Paragraph 1.4.5.

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

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

“Penalty” as used herein includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be determined in accordance with the *Sanction Guidelines of the North American Electric Reliability Council* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).

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

“Mitigation Plan” means a plan to eliminate the violation of a Reliability Standard and its underlying causes.

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“North American Electric Reliability Council” or “NERC” means North American Electric Reliability Corporation.

“Registered Entity” means each user, owner and operator of the Bulk-Power System within the United States that is required to register with ReliabilityFirst pursuant to 18 C.F.R. Section 39.2.

“ReliabilityFirst’s area of responsibility” means ReliabilityFirst’s corporate region.

“Reliable Operation” has the meaning set forth in the Federal Power Act, as it may be amended from time to time.

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

“Remedial Action Directive” means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or [contested](#) Remedial Action Directive, whichever is applicable.

“Hearing Procedure” means the procedure of ReliabilityFirst as set forth in this Paragraph 1.

“Staff” or “Compliance Staff” means individuals employed or contracted by ReliabilityFirst who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans. Staff members may participate and be represented by counsel in ReliabilityFirst proceedings, and shall have the rights and duties of any Participant. Staff members must satisfy ReliabilityFirst’s conflict of interest policy.

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

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

### 1.2.1 Contents of Filings

All filings made with ReliabilityFirst must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;

## Hearing Procedure

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

### 1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### 1.2.3 Submission of Documents

- a) Where to File

Filings shall be made with the Clerk of ReliabilityFirst located at the principal office of ReliabilityFirst. The office will be open during ReliabilityFirst's regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by ReliabilityFirst.

## Hearing Procedure

b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Body. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than close of business at ReliabilityFirst on the date specified.

c) How to File

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made.

Alternatively, filing by electronic means will be acceptable upon implementation of an electronic filing system by ReliabilityFirst.

d) Number of Copies to File

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

e) Signature

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

f) Verification

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

g) Certificate of Service

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

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### 1.2.4 Service

#### a) Service List

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

#### b) By Participants

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

#### c) By the Clerk

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

#### d) Effective Date of Service

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

## Hearing Procedure

### 1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the Office of ReliabilityFirst is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the Office of ReliabilityFirst is closed. ~~The time in which any action is required to be done shall be computed by excluding intermediate Saturdays, Sundays, and legal holidays, or days upon which the Office of ReliabilityFirst is closed when the period is less than fifteen (15) days.~~

### 1.2.6 Extensions of Time

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

### 1.2.7 Amendments

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

### 1.2.8 Transcripts

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

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

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



## Hearing Procedure

Any action taken by the Hearing Officer or the Hearing Body shall be recorded in a Ruling, Notice, Order or other applicable issuance, such as a transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Body. All notices of hearings shall set forth the date, time and place of hearing.

### 1.2.10 Location of Hearings and Conferences

All hearings, oral arguments and conferences shall be held at the principal office of ReliabilityFirst unless the Hearing Officer or Hearing Body elects a different location.

### 1.2.11 Participant Participation

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6.

### 1.2.12 Interventions Are Not Permitted

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, ~~no other Persons a Person that is shall be not a Participant to a docketed proceeding is not~~ permitted to intervene or otherwise become a Participant to that proceeding.

### 1.2.13 Proceedings Closed to the Public

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

### 1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a Notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Regional Entities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "RFC", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### 1.2.15 Hold Harmless

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees ReliabilityFirst, including without limitation its members, Board, compliance committee, any other committees or subcommittees, Staff, contracted employees,

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

### 1.3 Initiation of the Hearing Process

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

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

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

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

Either a notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of disagreement with a Registered Entity’s proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s rejection of position on the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity requests the shortened hearing procedure, Compliance Staff shall submit a filing within five (5) days of the Registered Entity’s hearing request that states whether Staff agrees to use the shortened hearing procedure. If Staff makes a filing requesting the full either fails to file or files but does not agree to use the shortened hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity shall be used. Once either the full or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

- a) The Registered Entity's self-report of a violation;
- b) The Notice of Alleged Violation and the Registered Entity's Response thereto; and/or
- c) The Registered Entity's proposed revised Mitigation Plan and the Compliance Staff's statement ~~rejected~~identifying its disagreement with the proposed revised Mitigation Plan.

### 1.3.2 Shortened Hearing Procedure

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

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

- a) The Prehearing Conference shall be held within seven (7) days after the date on which the Notice of Hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the Prehearing Conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within ~~seven (7)~~five (5) days after the date on which the Notice of Hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days of the Prehearing Conference, the Staff shall file:
  - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
  - 2) all documents that Staff seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:

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- 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Registered Entity seeks to introduce in support of its position that are not already in the record; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days of the Staff's reply comments filing pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days of the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "Brief on Exceptions" in accordance with Paragraph 1.7.5. No replies to Briefs on Exceptions shall be allowed.
- h) The Hearing Body shall strive, but is not required, to issue a Final Order within ninety (90) days of the Notice of Hearing.

The Hearing Officer or Hearing Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the Final Order within ninety (90) days of the Notice of Hearing.

### 1.4 General Hearing Procedure

#### 1.4.1 Notice of Hearing

Within seven (7) days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a Notice of Hearing in the docket. The Notice of Hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) days after the Notice of Hearing is issued. ~~The notice of hearing shall state that the Registered Entity has the option to elect either the shortened hearing procedures (Paragraph 1.3.2) or the full hearing procedures (Paragraphs 1.4 to 1.7).~~

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### 1.4.2 Hearing Officer

ReliabilityFirst may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Body as set forth in Paragraph 1.4.3. The Hearing Body reserves its right to attend any aspect of the hearing as a body or by individual members.

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

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, suspend or adjourn a hearing;
- 3) To separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- 4) To modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- 5) To supervise discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;
- 7) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 8) To rule on and receive evidence;
- 9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- 10) To issue initial opinions; and
- 11) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

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### 1.4.3 Hearing Body

The Hearing Body is vested with the authority to issue an order resolving the issue(s) in all cases. To that end:

- 1) The Hearing Body shall be entitled to receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.
- 2) The Hearing Body or any individual member thereof shall be entitled, but not required, to attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) The Hearing Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a Final Order.
- 4) The Hearing Body or any individual member thereof shall be entitled to offer upon its own motion information or documents, including books, papers, logs, graphs, maps, drawings, charts or any other written material, for submission into the evidentiary record at any time until the issuance of a Final Order; provided that the Participants shall be provided an opportunity to object to the motion seeking introduction of such information or documents into the evidentiary record, and to present testimony and other evidence in relation to such information or documents. The Hearing Body and individual members thereof shall strive to submit any such information or documents, upon motion, in a timely manner to avoid any undue delay in the hearing process. Participants shall file objections, if any, to a motion by the Hearing Body within 14 days after service of the motion. Participant objections shall clearly state the basis for the objection and may identify any evidence it seeks to introduce in response to the information or documents offered by the Hearing Body. If the Hearing Body denies the Participant's objections, or denies admission of any evidence submitted by the participant in relation to the information or documents introduced by the hearing body, the basis for the denial shall be explained in the Hearing Body's Final Order.
- 5) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it shall be entitled, on its own motion or upon petition for interlocutory review meeting the requirements of ~~pursuant to~~ Paragraph 1.4.4, to

## Hearing Procedure

reverse or modify the issuance or ruling in whole or in part, or to take any other action as may be appropriate.

- 6) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a Final Order. In issuing a Final Order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

### 1.4.4 Interlocutory Review

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

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

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

### 1.4.5 Disqualification

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

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

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

If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the ReliabilityFirst Compliance Committee shall appoint a new member(s) [from among the ReliabilityFirst Board of Directors](#) to the Hearing Body to create a quorum, which new member(s) shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter. The ReliabilityFirst Compliance Committee shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Body shall be subject to the provisions applicable herein to all Hearing Body members.

### 1.4.6 Technical Advisor

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

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

### 1.4.7 No Ex Parte Communications



## Hearing Procedure

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

### 1.4.8 Appearances

Participants shall file written appearances within seven (7) days of the Notice of Hearing. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, association, partnership or governmental body may appear

## Hearing Procedure

by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

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

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

### 1.4.9 Failure to Appear or Exercise Diligence

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such defaulting Participant. Any hearing costs incurred as a failure to appear may be assessed against such Participant.

Participants shall exercise diligence and timeliness in all actions before the Hearing Officer and the Hearing Body and in all other actions related to these Hearing Procedures. The failure of any Participant to exercise diligence or timeliness in any such actions, as determined by the Hearing Officer or Hearing Body, will be noted in the record and the Hearing Officer or Hearing Body may take such action as to promote the accomplishment of the goals of these Procedures outlined in Paragraph 1.1.3.

### 1.4.10 Consolidation of Proceedings

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

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

## 1.5 Prehearing Procedure

~~October 16, 2007~~

Revised for July 21, 2008 Compliance Filing

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### 1.5.1 Waiver of Time Limits

~~[Intentionally left blank] A Registered Entity that elects the full hearing procedure as set forth in Sections 1.4 to 1.7 shall be deemed to have waived the time limit requirements, if any, in the NERC Rules of Procedure.~~

### 1.5.2 Prehearing Conference

The purpose of the prehearing conference shall be to:

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

### 1.5.3 Summary Disposition

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

### 1.5.4 Status Hearings

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

## Hearing Procedure

forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.

### 1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate, including suspension of the procedural schedule to pursue settlement negotiations as set forth in ReliabilityFirst's Settlement Procedures, [Paragraph 2.0, which are publicly available on the ReliabilityFirst website at www.rfirst.org](#). Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay a hearing proceeding. When the Hearing Officer grants a motion to dismiss a proceeding in whole or in part, the ruling shall set forth the rationale for the grant and shall be considered an initial opinion.

### 1.5.6 Experts

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

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

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

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

- (A) requests for information to the Respondent;
- (B) every written request, including e-mail, directed to persons not employed by ReliabilityFirst to provide documents or to be interviewed;
- (C) the documents provided in response to any such requests described in (A) and (B) above;

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

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

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

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

(2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Body shall oversee the Staff's designation of documents to be produced to each Participant and the development, execution and enforcement of any protective order deemed necessary.

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

(4) Nothing in subparagraph (a)(1) shall limit the discretion of ReliabilityFirst to make available any other document or the authority of the Hearing Officer to order the production of any other document.

### b) Documents That May Be Withheld

(1) Staff may withhold a document if:

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

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

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

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

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

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

### c) **Withheld Document List**

~~The Hearing Officer may require Staff to submit to the Hearing Officer a list of documents withheld pursuant to Subparagraph (b)(1) or to submit to the Hearing Officer any document withheld.~~ At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). A list of withheld documents shall also be provided by any other Participant required to produce documents, at the time the documents are required to be produced. Upon review, the Hearing Officer may order Staff to — make the \_\_\_ list or any document withheld available to the Respondent(s) for inspection and copying. ~~A motion to require Staff to produce a list of documents withheld pursuant to Subparagraph (b)(1) shall be based upon some reason to believe that a document is being withheld in violation of these Hearing Procedures.~~

### d) **Timing of Inspection and Copying**

Except as set forth in this Paragraph, the Hearing Officer shall determine the schedule of production of documents pursuant to this hearing procedure provided that the Hearing Officer may modify any time period for production set forth in this Paragraph as warranted by the circumstances.

### e) **Place and Time of Inspection and Copying**

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Documents subject to inspection and copying pursuant to this Paragraph shall be made available to the Respondent for inspection and copying at the ReliabilityFirst office where the documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A Respondent shall be given access to the documents at the ReliabilityFirst's offices during normal business hours. A Respondent shall not be given custody of the documents or be permitted to remove the documents from the ReliabilityFirst's offices.

(f) **Copying Costs**

A Respondent may obtain a photocopy of all documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by ReliabilityFirst.

g) **Failure to Make Documents Available — Harmless Error**

In the event that a document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff, or a document required to be produced by any other Participant is not produced to the Respondent no rehearing or amended decision of a proceeding already heard or decided shall be required ~~unless Respondent establishes that~~ where the failure to make the document available was ~~not~~ harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff or another Participant to produce a document, the burden shall be on Staff or the other Participant that failed to produce the document to show that such failure was harmless error. Hearing Officer, or, upon review, the Hearing Body shall determine whether the failure to make the document available was not harmless error.

### 1.5.8 Other Discovery Procedures

~~In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods commonly used in civil courts, including requests for production of documents, written interrogatories, requests for admission, and depositions of witnesses under oath. All discovery that a Participant wishes to conduct, other than the inspection and copying of documents pursuant to Paragraph 1.5.7, shall be presented to the Hearing Officer at the prehearing conference or a status hearing or by written motion, and the Hearing Officer, after receiving any objections from other Participants, shall issue a ruling setting forth the discovery to be conducted and the schedule on which it shall be initiated and completed. The provisions of Subparagraphs (b) through (g) of Paragraph 1.5.7 shall apply to any such discovery. The Hearing Officer shall supervise all discovery in accordance with the following policies: (i) the opportunity to obtain full disclosure of all relevant and material documents and information shall be provided; (ii) a Participant shall be obligated to exercise due diligence in the conduct of discovery; and (iii)~~

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~~discovery shall not be employed by a Participant as a means of delay of the proceeding or to harass or burden any other Participant.~~

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 408 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, and requests for admissions. Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 408 and 410 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.408 and 385.410, which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (a) The provisions of Subparagraphs (b) through (g) of Paragraph 1.5.7 shall apply to any such discovery.
- (b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §384.410(b)(2)) shall not be applicable.
- (c) The Hearing Officer and the Hearing Body do not have the authority to issue subpoenas to, or otherwise order or compel the appearance by or production of documents or information by, any person or entity that is not a Participant.
- (d) References to the “Commission” in Rules 402 through 408 and 410 shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b) and the second reference in Rule 410(d) shall be deemed to be to the “Hearing Body”, and (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff.
- (e) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, or request for admissions, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request.
- (f) Unless otherwise ordered by the Hearing Officer or Hearing Body, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.



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- (g) Notwithstanding (e) and (f), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant and material documents and information; (ii) a Participant shall be obligated to the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to ~~of delay of the proceeding or to harass or burden any other Participant.~~

### 1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

Unless the Hearing Officer orders otherwise and with the exception of any adverse Participant examination pursuant to Paragraph 1.6.16, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and will be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. This requirement does not preclude a Participant from using a document or other demonstrative evidence if grounds exist for such use in the conduct of proper cross-examination even if the Participant did not file the document in advance of the evidentiary hearing.

Compliance Staff shall file the documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Registered Entity shall file the documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the documents it intends to offer into evidence in response to the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.

If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Registered Entity to submit a rebuttal case that responds to Staff's rebuttal case, in which event the Hearing Officer shall also allow Staff to submit a surrebuttal case that responds to the Registered Entity's rebuttal case.

Each round of evidence shall be limited in scope to the preceding round of evidence to which it is responsive, except that the Registered Entity's direct case may exceed the scope of Staff's direct case if necessary for the Registered Entity to set forth its direct case fully.

The Participants shall file the documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of testimony and other evidence in advance of the evidentiary hearing shall not entitle the documents for admission into the evidentiary record. The Participants must offer their witnesses' testimony and other proposed evidence for admission into the evidentiary record during the evidentiary hearing.

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Any Participant who fails, without good cause shown, to comply with the Hearing Officer's schedule for the filing of written testimony and other evidence in advance of the evidentiary hearing may be limited in the presentation of its evidence during the evidentiary hearing or have its participation in the evidentiary hearing otherwise restricted to avoid undue prejudice and delay.

### 1.5.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances from these proceedings, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. At any time during a proceeding, on the Hearing Officer's own motion or on the motion of any Participant, an order may be entered to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information, ~~for which NERC Security Guidelines for the Electricity Sector—Protecting Potentially Sensitive Information may be used as a guide;~~ (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; or (vi) investigative files or documents that would disclose investigative techniques of Staff, ReliabilityFirst or any Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).
- c) A Participant submitting a motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, information or studies, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.

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- e) The protective order shall identify the data, information or studies that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
- f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall close the hearing while the information is addressed to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

### 1.5.11 Pre-Evidentiary Hearing Memorandum

The Hearing Officer or the Hearing Body may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memorandums prior to the evidentiary hearing that outline each Participant's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. The purpose of such memorandums will be to aid the Hearing Officer and Hearing Body in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum. The Hearing Officer may establish page limitations on such submissions.

## 1.6 Evidentiary Hearing Procedure

### 1.6.1 Evidentiary Hearings

The purpose of the evidentiary hearing shall be to admit the Participants' evidence into the record, and for each Participant to have the opportunity to cross-examine the other Participant's witnesses. A schedule for briefs, unless waived by the Participants, shall be set at the conclusion of the evidentiary hearing. The evidentiary hearing also may be used to address any other issue pending between the Participants.

### 1.6.2 ~~Burden of Proof and~~ Order of Receiving Evidence

~~The standard of proof in the hearing shall be by a preponderance of the evidence. The burden of persuasion on the merits of the hearing shall rest upon Compliance Staff alleging noncompliance with a Reliability Standard, proposing a Penalty or opposing a Registered Entity's Mitigation Plan. As such, i~~n all proceedings, Compliance Staff shall open and close.

### 1.6.3 Opening and Closing Statements

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be

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required when requested by the Hearing Officer or the Hearing Body. Any Participant's request for such statements, or Hearing Officer or Hearing Body notice requiring such statements, shall be made at least ten (10) days in advance of the evidentiary hearing.

### **1.6.4 Right of Participant to Present Evidence**

A Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### **1.6.5 Exhibits**

All material offered in evidence, unless the Hearing Officer allows oral testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter, or other Hearing Officer designee, with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### **1.6.6 Witness Attendance at Evidentiary Hearing**

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Body have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall file an affidavit of the witness attesting to the veracity of the witness' testimony and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise. All testimony is to be under oath or affirmation.

Except for witnesses who are not required to attend the evidentiary hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted

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into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Body, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except in exceptional cases and upon a showing of good cause, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary hearing. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is ReliabilityFirst's policy to discourage witness testimony at an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken to provide the other Participants with a fair opportunity for response and cross-examination.

### 1.6.8 Evidence that is Part of a Book, Paper or Document

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a copy of such matter in proper form shall be offered as an Exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### 1.6.9 Stipulation

The Participants may stipulate to any relevant fact or the authenticity of any relevant document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

### 1.6.10 Official Notice

The Hearing Officer may take official notice of any of the following:

- 1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of regional reliability entities other than ReliabilityFirst.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed ReliabilityFirst proceedings.
- 3) State and Federal statutes and municipal and local ordinances.
- 4) The decisions of State and Federal courts.

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- 5) Generally recognized scientific or technical facts within the specialized knowledge of Reliability *First*.
- 6) All other matters of which the courts of the United States may take judicial notice.

An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit unless waived by the Participants and approved by the Hearing Officer. Any scientific or technical fact, or other information not in document form, of which notice is taken shall be set forth in a statement on the record. The Hearing Officer will afford any Participant making a timely request an opportunity to show the contrary to the matter officially noticed.

### 1.6.11 Admissibility of Evidence

Any evidence offered, including that which is included in a book, paper or document pursuant to Paragraph 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

Generally recognized rules of evidence shall not apply. Rather, the Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. However, the Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### 1.6.12 Offer of Proof

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

### 1.6.13 Reservation of Evidentiary Ruling

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

### 1.6.14 Cross-Examination

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' cross-examination, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Body

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seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Body. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Body. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' redirect-examination. If a member of the Hearing Body seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.16 Examination of Adverse Participant**

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to do so, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the evidentiary hearing.

### **1.6.17 Close of the Evidentiary Record**

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, and the number and complexity of the issues.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.

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- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### 1.7.2 Other Pleadings

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### 1.7.3 Draft Opinions

The Hearing Officer may permit or require Participants to file draft opinions that set forth the Participants' proposed findings of fact and conclusions of law.

### 1.7.4 Hearing Officer's Initial Opinion

Except as otherwise ordered by the Hearing Body, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Body's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty or Mitigation Plan that the Hearing Officer proposes the Hearing Body require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be Critical Energy Infrastructure Information protected pursuant to Paragraph 1.5.10.

### 1.7.5 Exceptions

- a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "Brief on Exceptions" and, within fourteen (14) days after the time for filing "Briefs on Exceptions" or such other time as is set by the Hearing Officer, any Participant may file as a reply, "Brief in Reply to Exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error of fact or law asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed:



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- 1) together in one brief; or
  - 2) in two separate documents, one designated as the brief containing arguments, and the other designated "Exceptions," containing the suggested replacement language.
- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
  - d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
  - e) Statements of fact should be supported by citation to the record.
  - f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions.
  - g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

### 1.7.6 Oral Argument

The Hearing Body may elect to hear oral argument. If oral argument is held without initial briefs, Participants will be given the opportunity to present argument on all issues. If oral argument is held in addition to initial briefs, argument may be limited to issues identified by the Hearing Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and shall contain accurate record citations. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than 48 hours prior to the time and date of oral argument.

### 1.7.7 Additional Hearings

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Body's own motion if there is reason to believe

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that reopening is warranted by any changes in conditions of fact or law, or by the public interest. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes of fact or of law, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### 1.7.8 Hearing Body Final Order

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its Final Order. Issuance of a Final Order shall require (i) a quorum of the hearing Body, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Body shall strive, but shall not be required, to issue its Final Order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The Final Order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Final Order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. If the Final Order imposes a Penalty, it shall be entitled Final Order and Notice of Penalty. The Final Order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.10. The Hearing Body shall direct the Clerk to serve the Final Order on the Participants. The service of the Final Order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### 1.7.9 The Record

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:

- 1) Notice of Alleged Violation and Registered Entity's Response thereto;
- 2) Registered Entity's Proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- 3) Registered Entity's request for a hearing;
- 4) Participant filings, motions, and responses;
- 5) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- 6) Transcripts;
- 7) Evidence received;

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- 8) Matters officially noticed;
- 9) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 10) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 11) Post-hearing pleadings other than briefs;
- 12) The Hearing Officer's initial opinion;
- 13) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 14) The Hearing Body's Final Order and any Notice of Penalty therewith;
- 15) All Notices of Ex Parte Communications;
- 16) Written comments submitted in lieu of written testimony;
- 17) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer of Technical Advisor and any responses or replies thereto; and
- 19) All Settlement Agreements and supporting Explanatory Statements, and Initial Opinions and Final Orders on Settlement Agreements.

### 1.7.10 Appeal

A Final Order of the Hearing Body may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit the record of any docket to NERC that is the subject of an appealed Final Order.

## 1.8 Settlement

Settlements may be entered into at any time pursuant to ReliabilityFirst's Settlement Procedures, [which are publicly available on the ReliabilityFirst web-site at www.rfirst.org... Paragraph 2.0.](#)

## 1.9 Remedial Action Directives

### 1.9.1 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. [The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program.](#) ReliabilityFirst will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

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The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of Reliability *First* that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following ~~issuance~~the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice to Reliability *First* within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.9.2(a).

### 1.9.2 Remedial Action Directive Hearing Procedure

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless a rule's context is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

The Remedial Action Directive hearing may be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- a) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- e) The Participants shall not file any briefs or draft opinions, and oral argument shall not be held.
- f) The Hearing Body shall issue a summary written decision within ten (10) days following the hearing, stating whether the Registered Entity shall or shall not be

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required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.

- g) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.

## Exhibit E — Funding

### 1. Scope of activities funded through the ERO funding mechanism

ReliabilityFirst shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness [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

ReliabilityFirst shall allocate its dues, fees, and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges ~~is expressly provided for in the annual business plan and budget~~ [has been submitted to and approved by NERC and ReliabilityFirst to the Commission pursuant to 18 C.F.R. §39.4, in accordance with Section 8\(b\) of the delegation agreement.](#) ReliabilityFirst shall submit to NERC annually at the same time it submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate ReliabilityFirst's dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

### 3. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities identified by ReliabilityFirst covering the NERC and ReliabilityFirst budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund ReliabilityFirst's costs identified in [Section 1 of](#) this Exhibit E in four equal quarterly payments.

### 4. Application of Penalties

All penalty monies received by ReliabilityFirst, other than penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Any penalty monies received from an operational function or division or affiliated entity of ReliabilityFirst shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

#### 5. Budget and Funding for ReliabilityFirst's Non-Statutory Activities

~~If ReliabilityFirst performs any functions or activities other than~~ In addition to its delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such functions and activities referred to in this Section 5 as "statutory activities"), ReliabilityFirst performs the following other functions and activities (such other functions and activities being referred to herein this Section 5 as "non-statutory activities"), **None.**

ReliabilityFirst shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities, and (ii) record the costs it incurs in the performance of its non-statutory functions separately from the costs it incurs in the performance of its statutory functions:  
**Not applicable.**

ReliabilityFirst shall provide its budget for such non-statutory activities to NERC at the same time that ReliabilityFirst submits its annual ~~Business Plan and Budget~~ budget request to NERC pursuant to Section 1. ~~For non-statutory activities,~~ ReliabilityFirst's ~~annual Business Plan and Budget~~ budget for non-statutory activities that is provided to NERC shall contain a detailed list of ReliabilityFirst's non-statutory activities, ~~and~~ a description of the funding sources for the non-statutory activities, ~~and a description of the procedures ReliabilityFirst 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.~~ ReliabilityFirst agrees that no costs of non-statutory activities are to be included in the calculation of ReliabilityFirst's dues, fees, and other charges for its statutory activities ~~pursuant to this Agreement.~~