

Meeting Agenda Board of Trustees Compliance Committee

October 28, 2008 | 3:30–4:45 p.m.

The Westin Arlington Gateway
801 North Glebe Road
Arlington, VA
703-717-6200

Welcome and Determination of Quorum

NERC Antitrust Guidelines

1. Overview of Meeting Objectives and Process
2. Consent Agenda: Action — Approve
 - a. Minutes of July 29, 2008 Meeting (**Item 2.a**)
 - b. Future Meetings (**Item 2.b**)
3. Current Status of Post-June 18 Alleged Violations of Reliability Standards
 - a. Violation Process States Flowchart (**Item 3.a**)
 - b. Violation Process State Summary Table — Active FERC Enforceable Violations (**Item 3.b**)
 - c. Summary Table of All Post-June 18 Alleged Violations (**Item 3.c**)
 - d. Top FERC Enforceable Violated Standards through September 25, 2008 (**Item 3.d**)
4. Current Status of Mitigation of Violations of Reliability Standards
 - a. Mitigation Process States Flowchart (**Item 4.a**)
 - b. Mitigation Process State Table — Active FERC Enforceable Alleged Violations (**Item 4.b**)
 - c. Mitigation Summary of pre-June 18 Violations (**Item 4.c**)
5. Regional Outstanding Issues Report Summary (**Item 5**)
6. May 2008 Mandate Items
 - a. Compliance Committee Work Plan (**Item 6.a**)
 - b. Issue 2.A. — Penalty Tool: summary, options, pros, and cons (**Item 6.b**)
 - c. Issue 2.G. — Posting Interpretations: summary, options, pros, and cons (**Item 6.c**)

- d. Prioritization for Addressing Questions Raised in Compliance Committee Mandate (**Item 6.d**)
- 7. Other Matters

Antitrust Compliance Guidelines

I. General

It is NERC's policy and practice to obey the antitrust laws and to avoid all conduct that unreasonably restrains competition. This policy requires the avoidance of any conduct that violates, or that might appear to violate, the antitrust laws. Among other things, the antitrust laws forbid any agreement between or among competitors regarding prices, availability of service, product design, terms of sale, division of markets, allocation of customers or any other activity that unreasonably restrains competition.

It is the responsibility of every NERC participant and employee who may in any way affect NERC's compliance with the antitrust laws to carry out this commitment.

Antitrust laws are complex and subject to court interpretation that can vary over time and from one court to another. The purpose of these guidelines is to alert NERC participants and employees to potential antitrust problems and to set forth policies to be followed with respect to activities that may involve antitrust considerations. In some instances, the NERC policy contained in these guidelines is stricter than the applicable antitrust laws. Any NERC participant or employee who is uncertain about the legal ramifications of a particular course of conduct or who has doubts or concerns about whether NERC's antitrust compliance policy is implicated in any situation should consult NERC's General Counsel immediately.

II. Prohibited Activities

Participants in NERC activities (including those of its committees and subgroups) should refrain from the following when acting in their capacity as participants in NERC activities (e.g., at NERC meetings, conference calls and in informal discussions):

- Discussions involving pricing information, especially margin (profit) and internal cost information and participants' expectations as to their future prices or internal costs.
- Discussions of a participant's marketing strategies.
- Discussions regarding how customers and geographical areas are to be divided among competitors.

- Discussions concerning the exclusion of competitors from markets.
- Discussions concerning boycotting or group refusals to deal with competitors, vendors or suppliers.
- Any other matters that do not clearly fall within these guidelines should be reviewed with NERC's General Counsel before being discussed.

III. Activities That Are Permitted

From time to time decisions or actions of NERC (including those of its committees and subgroups) may have a negative impact on particular entities and thus in that sense adversely impact competition. Decisions and actions by NERC (including its committees and subgroups) should only be undertaken for the purpose of promoting and maintaining the reliability and adequacy of the bulk power system. If you do not have a legitimate purpose consistent with this objective for discussing a matter, please refrain from discussing the matter during NERC meetings and in other NERC-related communications.

You should also ensure that NERC procedures, including those set forth in NERC's Certificate of Incorporation, Bylaws, and Rules of Procedure are followed in conducting NERC business.

In addition, all discussions in NERC meetings and other NERC-related communications should be within the scope of the mandate for or assignment to the particular NERC committee or subgroup, as well as within the scope of the published agenda for the meeting.

No decisions should be made nor any actions taken in NERC activities for the purpose of giving an industry participant or group of participants a competitive advantage over other participants. In particular, decisions with respect to setting, revising, or assessing compliance with NERC reliability standards should not be influenced by anti-competitive motivations.

Subject to the foregoing restrictions, participants in NERC activities may discuss:

- Reliability matters relating to the bulk power system, including operation and planning matters such as establishing or revising reliability standards, special operating procedures, operating transfer capabilities, and plans for new facilities.
- Matters relating to the impact of reliability standards for the bulk power system on electricity markets, and the impact of electricity market operations on the reliability of the bulk power system.
- Proposed filings or other communications with state or federal regulatory authorities or other governmental entities.
- Matters relating to the internal governance, management and operation of NERC, such as nominations for vacant committee positions, budgeting and assessments, and employment matters; and procedural matters such as planning and scheduling meetings.

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Meeting Minutes Board of Trustees Compliance Committee

July 29, 2008 | Montreal, Quebec

Welcome and Introductions

Chairman Paul Barber called to order the duly noticed meeting of the Board of Trustees Compliance Committee on July 28, 2008 at 11:30 a.m., and a quorum was declared. The meeting attendance list and agenda are attached as **Exhibits A** and **B**, respectively.

NERC Antitrust Guidelines

Chairman Barber reviewed the guidelines as required.

Minutes of May 6, 2008

The committee noted several changes. With these modifications it was motioned for approval of the May 6, 2008 minutes. The motion was unanimously approved.

Violation Process States Flowchart

David Hilt presented the violation process states flowchart. Violations are moving through the process and NERC and the Regions are preparing to submit additional Notices of Penalty to FERC. The July 3, 2008 FERC Order was discussed. The committee discussed concerns regarding WECC's backlog with Louise McCarren and Steve McCoy. Mr. McCoy indicated that a large number of violations will be moving through the process in the next several months.

Process State Summary Table

David Hilt presented the total numbers of alleged violations by Region and process state.

Summary Table of All post-June 18, 2007 Alleged Violations

David Hilt presented Item 2.c. There was little discussion.

Top Enforceable Violated Standards through July 21, 2008

David Hilt presented the bar chart of the Top Enforceable Violated Standards.

Mitigation Process States Flowchart

Chairman Barber reminded everyone that mitigation plans tend to group violations together, the chart tracks the number of violations. David Hilt indicated that a State 4 has been added to the flowchart.

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Mitigation Process State Table — Enforceable Alleged Violations

Concern was voiced that the violation states do not always match up with the mitigation states. David Hilt said that accepted mitigation plans that were not received from the Region has gone down. Twenty-two percent of the violations have some sort of confirmation regarding mitigation completion.

Mitigation Summary of pre-June 18, 2007 Violations

David Hilt indicated that the 2005 column will be removed as all 2005 violations have been mitigated. Chairman Barber congratulated the Regions. Several typos were found and will be corrected in future agendas.

Compliance Committee Work Plan

David Whiteley provided a background regarding the workplan. The committee discussed various resources, including stakeholders, to gather input. The issue of standard interpretations by compliance staff in the field was raised. Chairman Barber questioned why these questions weren't raised during the standards process. Gerry Cauley indicated that standard interpretations weren't being made, but rather, practical judgments of auditors. Discussion also centered around public release of the Penalty Tool. It was agreed that there is a basis for not releasing it because it is a tool used in determining penalties for noncompliance. Chairman Barber would like David Whiteley to post the workplan for comments regarding priority items. He would also like a timeline presented to the committee. Clay Smith indicated that the CCC would like to work with the committee.

Adjournment

Chairman Barber adjourned the meeting at 12:30 p.m.

Board of Trustees Compliance Committee

2008 Meeting Dates

Open Meetings		Closed Meetings		Closed NOP/Appeals Meetings	
		July 1, 2008	10 a.m.–noon Conference Call	July 1, 2008	1–3 p.m. Conference Call
July 29, 2008	Montreal, Quebec	July 29, 2008	Montreal, Quebec	August 18, 2008	10 a.m.–noon Conference Call
		September 2, 2008	10 a.m.–noon Conference Call	September 2, 2008	1–3 p.m. Conference Call
		October 7, 2008	10 a.m.–noon Conference Call	October 7, 2008	1–3 p.m. Conference Call
October 28, 2008	Washington, D.C.	October 28, 2008	Washington, D.C.	October 27, 2008	3 p.m. Washington, D.C.
		November 10, 2008	10 a.m.–noon Conference Call	November 10, 2008	1–3 p.m. Conference Call
		December 9, 2008	10 a.m.–noon Conference Call	December 9, 2008	1–3 p.m. Conference Call

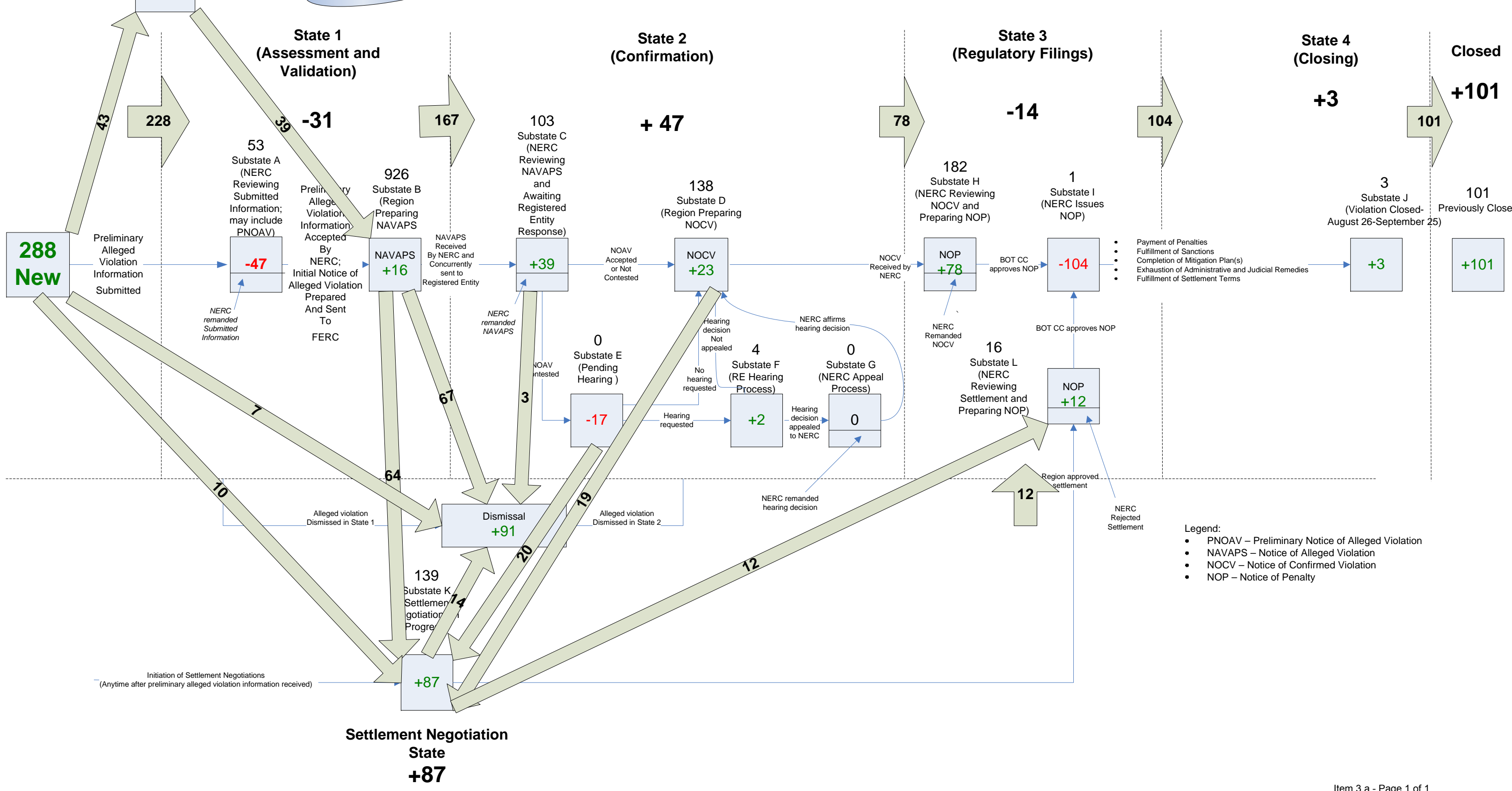
Board of Trustees Compliance Committee

2009 Meeting Dates

Open Meetings		Closed Meetings		Closed-Closed Meetings	
		January 9	10 a.m.–noon	January 9	1–3 p.m.
February 9	Scottsdale/Phoenix, AZ	February 9	10 a.m.–noon	February 8	3 p.m.
		March 10	10 a.m.–noon	March 10	1–3 p.m.
		April 10	10 a.m.–noon	April 10	1–3 p.m.
May 5	TBD	May 11	10 a.m.–noon	May 11	1–3 p.m.
		June 10	10 a.m.–noon	June 10	1–3 p.m.
		July 10	10 a.m.–noon	July 10	1–3 p.m.
August 4	TBD	August 10	10 a.m.–noon	August 10	1–3 p.m.
		September 11	10 a.m.–noon	September 11	1–3 p.m.
		October 12	10 a.m.–noon	October 12	1–3 p.m.
November	TBD	November 9	10 a.m.–noon	November 9	1–3 p.m.
		December 9	10 a.m.–noon	December 9	1–3 p.m.

Violation Process States and Underlying Process Sub states

Third Quarter Snapshot comparison between June 26, 2008 and September 25, 2008



Violation Process State Summary Table — Active FERC Enforceable Alleged Violations

Below is a breakdown, as of September 25, 2008, of the Compliance Monitoring and Enforcement Program (CMEP) Violation “state” summary for the 1565 active violations.

Region	State 1 (Assessment and Validation)		State 2 (Confirmation)					Settlement	State 3 (Regulatory Filings)			State 4 (Closing)	Total	States 3 and 4 Percentage of Total
	Substate A (NERC Reviewing)	Substate B (Region Preparing NAVAP)	Substate C (NERC Reviewing NAVAP and awaiting RE Response)	Substate D (Region Preparing NOCV)	Substate E (Pending Hearing)	Substate F (RE Hearing Process)	Substate G (NERC Appeal Process)	Substate K (Settlement Negotiations)	Substate H (NERC Reviewing NOCV)	Substate L (NERC Reviewing Settlement Agreement)	Substate I (NERC Issues NOP)	Substate J (Violation Closes)		
FRCC	0	38	1	22	0	0	0	9	16	0	0	0	86	18.6%
MRO	0	14	1	0	0	2	0	0	30	0	1	0	48	64.6%
NPCC	0	18	0	0	0	0	0	0	1	0	0	0	19	5.3%
RFC	0	64	0	3	0	2	0	1	11	0	0	1	82	14.6%
SERC	12	51	1	0	0	0	0	22	12	16	0	0	114	24.6%
SPP	0	8	0	42	0	0	0	1	1	0	0	0	52	1.9%
TRE	0	2	0	0	0	0	0	16	18	0	0	2	38	52.6%
WECC	41	731	100	71	0	0	0	90	93	0	0	0	1126	8.3%
TOTAL	53	926	103	138	0	4	0	139	182	16	1	3	1565	12.9%
Percentage of Total	3.39%	59.17%	6.58%	8.82%	0.00%	0.26%	0.00%	8.88%	11.63%	1.02%	0.06%	0.19%		

Definitions

Substate A = Preliminary Notice of Alleged violation information has been received from the Region but no Initial Notice has been issued to FERC.

Substate B = NERC is awaiting receipt of Notice of Alleged Violation Proposed Penalty or Sanction from the Region.

Substate C = NERC has received Notice of Alleged Violation Proposed Penalty or Sanction and is awaiting acceptance, auto acceptance or contest.

Substate D = Region received acceptance letter from Registered Entity, or 30 day clock expired and violation is Auto Accepted and is now Confirmed.

Substate E = Region has received letter contesting violation from Registered Entity.

Substate F = Region has received request for Hearing from Registered Entity.

Substate G = NERC has received request for Appeal from Registered Entity.

Substate H = NERC has received a Notice of Confirmed Violation from the Region.

Substate I = Violation is Confirmed/Settled and a Notice of Penalty has been issued by NERC to Registered Entity and submitted to FERC.

Substate J = Payment of Penalties, Fulfillment of Sanctions, Completion of Mitigation Plan, Exhaustion of Administrative and Judicial Remedies, and Fulfillment of Settlement terms have all been met and violation is closed.

Substate K = Settlement negotiations are in progress.

Substate L = NERC has received a Settlement Agreement from the Region.

* Includes new violations processed through 9/25/2008.

Summary of all Post June 18th Alleged Violations by Region

Below is a breakdown, as of September 25, 2008 of the Compliance Monitoring and Enforcement (CMEP) alleged violation summary for all 2022 submitted violations.

	Dismissed	Previously Closed	Newly Closed	Total FERC Enforceable	% Non-Document Related	Total Canadian Violations	Total FERC Non-Enforceable	Grand Total
FRCC	0	0	0	86	58%	0	5	91
MRO	10	6	0	48	27%	4	0	68
NPCC	8	12	0	19	16%	3	0	42
RFC	4	0	1	81	59%	0	1	87
SERC	22	70	0	114	39%	0	5	211
SPP	0	5	0	52	71%	0	0	57
TRE	1	8	2	36	67%	0	1	48
WECC	283	0	0	1126	52%	2	7	1418
TOTAL	328	101	3	1562	52%	9	19	2022

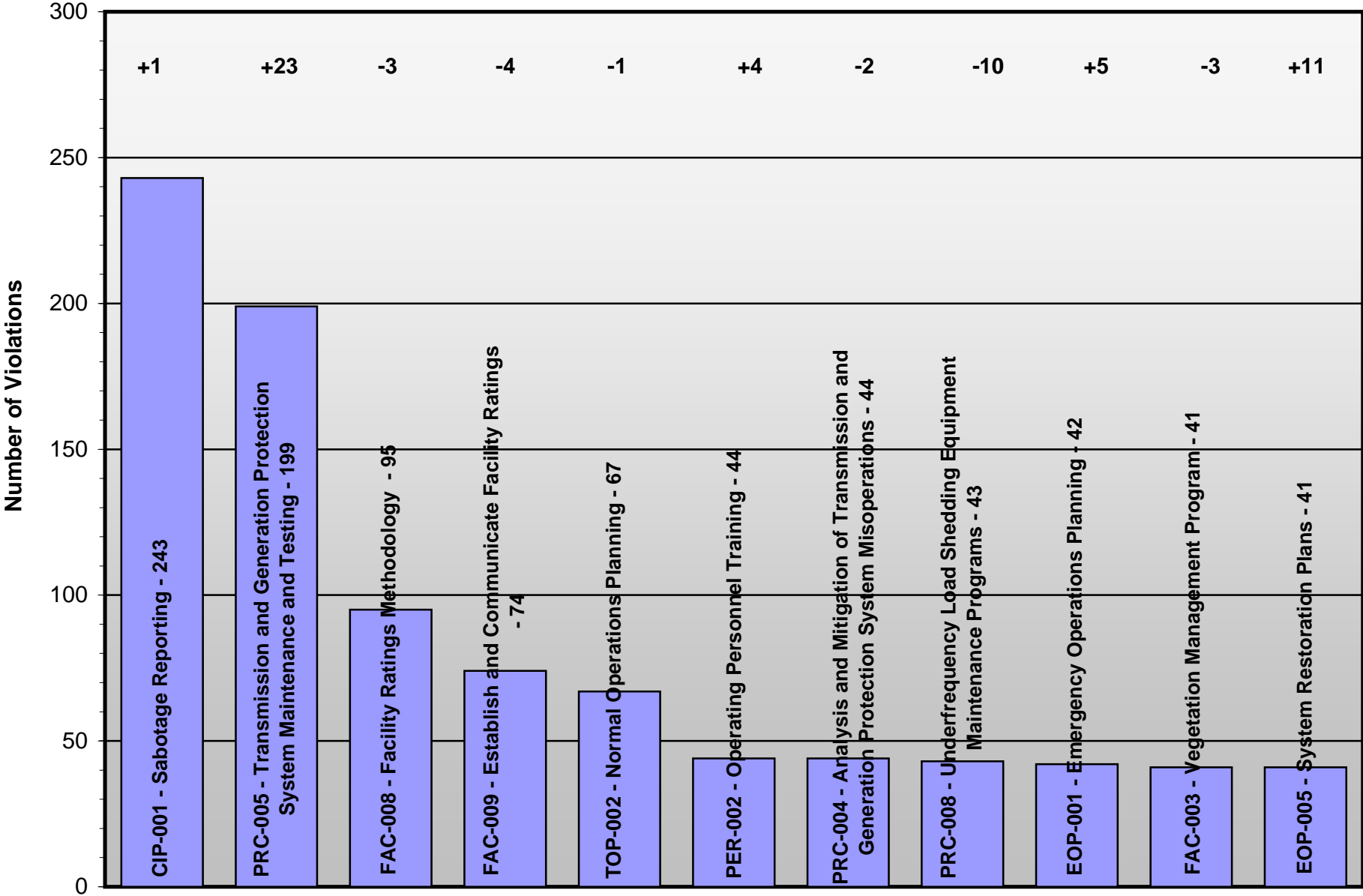
Includes new violations processed through 9/25/2008.

* Canadian Violations: MRO – 3 Saskatchewan; 1 Manitoba
 NPCC – 2 Quebec; 1 Nova Scotia
 WECC – 2 British Columbia

Post June 18 State Summary

Report Date: 9/29/2008

**Top FERC Enforceable Violated Standards
thru September 25, 2008**



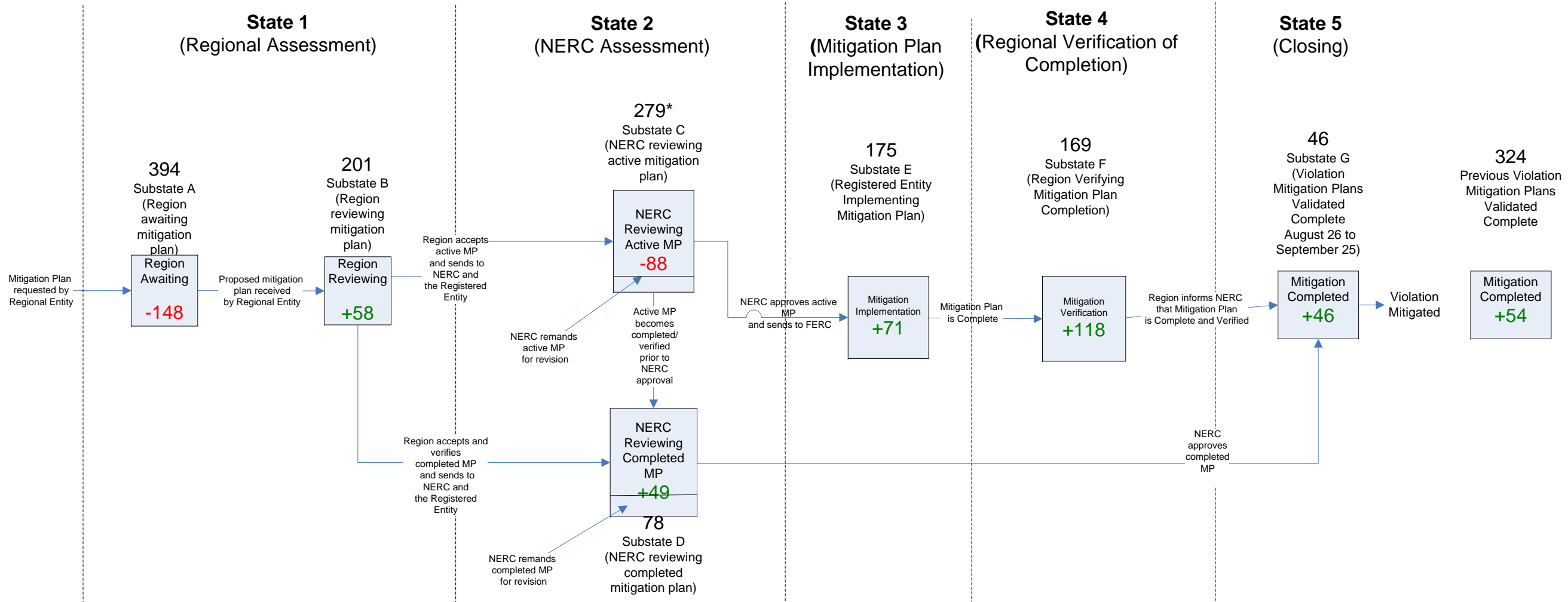
Excludes dismissed violations.

Standards

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Mitigation Process States and Underlying Process Substates

Third Quarter Snapshot comparison between June 26, 2008 and September 25, 2008



* The current 279 violations in Substate C include 21 accepted violation mitigation plans not received from the region and 258 violation mitigation plans under NERC review or remanded back to the region.

Mitigation Plans Process State Table — Active FERC Enforceable Alleged Violations

Below is a breakdown, as of September 25, 2008, of the Compliance Monitoring and Enforcement Program (CMEP) Mitigation Plan “state” summary for the 1342 active violations.

Region	State 1 (Regional Assessment)		State 2 (NERC Assessment)			State 3 (Mitigation Plan Implementation)	State 4 (Regional Verification of Completion)	State 5 (Closing)	Total	States 4 and 5 Percentage of Total
	Substate A	Substate B	Substate C		Substate D	Substate E	Substate F	Substate G		
	Region Awaiting	Region Reviewing	Accepted MP Not Received from Region	NERC Reviewing Active MP	NERC Reviewing Completed MP	Registered Entity Implementation	Regional Verification of MP Completion	Mitigation Plan Validated Complete		
FRCC	23	4	0	4	0	10	21	4	66	37.88%
MRO	13	0	0	2	3	0	0	0	18	0%
NPCC	14	0	0	0	0	0	0	0	14	0%
RFC	40	1	0	5	0	4	6	0	56	10.71%
SERC	58	19	0	8	0	4	2	4	95	6.32%
SPP	5	32	0	0	1	2	0	0	40	0%
TRE	16	0	0	0	0	6	0	0	22	0%
WECC	225	145	21	239	74	149	140	38	1031	17.26%
Total	394	201	21	258	78	175	169	46	1342	16.02%
Percentage of Total	29.36%	14.98%	1.56%	19.23%	5.81%	13.04%	12.59%	3.43%		

Definitions

Substate A = Region is still awaiting receipt of mitigation plan from Registered Entity.

Substate B = Region has received mitigation plan and is reviewing.

Substate C = NERC has received mitigation plan and is reviewing. Also includes any mitigation plans not yet received by NERC or remanded back to the Region.

Substate D = Mitigation plan has been verified completed by the Region but is still awaiting approval by NERC.

Substate E = Mitigation plan has been approved by NERC, and sent to FERC, but has not been completed.

Substate F = Mitigation Plan has been completed per Registered Entity but is being verified by the Region.

Substate G = Mitigation plan has been verified completed by Region, has been approved by NERC, and sent to FERC.

- Includes new violations processed through 9/25/2008.

Report Date: 9/29/2008

Mitigation Plan Summary of Pre-June 18th Violations

Below is a breakdown of the remaining unmitigated pre-June 18th violations occurring between January 2005 and June 18, 2007, by Region, updated as of September 25, 2008.

	2006 Unmitigated			2007 Unmitigated			All Years	
	Alleged	Target Date Passed	Total 2006	Alleged	Target Date Passed	Total 2007	Total Unmitigated	Under Verification
FRCC	0	1	1	37	22	39	40	122
MRO	0	0	0	0	0	0	0	0
NPCC	0	0	0	0	0	0	0	0
RFC	0	0	0	0	4	5	5	0
SERC	0	0	0	0	5	7	7	0
SPP	0	0	1	0	0	0	1	0
TRE	0	0	0	0	0	1	1	0
WECC	0	7	8	7	172	357	365	209
TOTAL	0	8	10	44	203	409	419	331

Definitions

Target Date Passed = Violations that are listed as “In Progress” or “To be determined” per the region’s linear spreadsheet that have an Estimated Mitigation Completion Date which has passed.

*WECC alleged violations are considered to be RMS violations.

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Regional Outstanding Issues Summary Report

October 15, 2008

Table 1: Number of Alleged Violations without NAVAPS Received

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
FRCC	1	5	4	26	
MRO	3	11	1		
NPCC	3		4		
RFC	8	15	21	1	23
SERC	26	30	12	3	
SPP	3	1	4	1	
TRE	4				
WECC	15	148	445	92	71

Table 2: Mitigation Plan Accepted by Region but not received by NERC

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
WECC	4	4	1	3	1

Table 3: Confirmed violations where the region has not received a mitigation plan

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
WECC	15				

Table 4: Confirmed violations (NAVAPS accepted) where the region has not provided a NOCV to NERC

Region	< 50 days	50–100 days	101–200 days	201–300 days	> 301 days
FRCC		1	21	1	
RFC				2	1
SERC	1				
SPP		32	10		
WECC	61		10		

Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program

Version 4
October 20, 2008

1

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Introduction

Purpose

The *Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program* establishes an approach to address issues raised regarding the NERC Compliance Monitoring and Enforcement Program after its first full year of operation with mandatory and enforceable reliability standards in the United States. The work plan also serves to communicate to the industry participants and governmental authorities to whom NERC is accountable as the ERO how the issues will be prioritized and ultimately considered by the Compliance Committee. This work plan will require continuous input and support by the users, owners, and operators of the bulk power system, the approved Regional Entities, NERC staff, and in some cases governmental authorities.

Background

Following the May, 2008 NERC Board of Trustees meeting, three Board committees were tasked with reviewing the policies, procedures, and priorities within three NERC program areas. The Compliance Committee was tasked with reviewing the policies, procedures, and priorities within the compliance program. To jump start the work of the Board committees, NERC staff collected suggestions of policy, procedure, and process **questions** that are important for the committees to address. That initial request to provide input on suggested questions went to the Board of Trustees and the Regional Entity executives. Each committee was expected to consider this initial input and to seek other input as it deemed necessary to fully address their appointed program area.

The questions submitted on compliance issues were initially grouped into five areas for consideration by the Compliance Committee. The questions were not organized with the five groups in any particular manner, instead leaving that to the work of the committee. The five areas are:

1. Review the prioritization of effort within the Compliance Program;
2. Review the compliance process to achieve greater efficiency, clarity, consistency, and effectiveness;
3. Reexamine NERC's relationship with FERC regarding the Compliance Program;
4. Review overall stakeholder participation in the compliance process; and
5. Review the relationship between NERC and the Regional Entities on the execution of the Compliance Program.

Version 4
October 20, 2008

Work Plan Strategy

The work plan has been designed to allow for a structured and logical approach to address the issues identified given limited resources of the Compliance Committee, NERC's staff, and the Regional Entities' staffs to complete the review and implementation of outcomes from this work plan.

This structure allows the establishment of priorities by the committee based on broad categories of issues which are further divided among three general classifications based on the time frame by which an outcome could be realized and an issue resolved. These classifications include:

Short Term - Actions the Compliance Committee could resolve before the end of 2008 [Comment: given the pace, the issues identified as short term may stretch into Q2'09.] by collecting necessary information and rendering a decision. These decisions would not require Rules of Procedure changes or other regulatory actions and can be accomplished quickly within the current framework.

Medium Term – Actions the Compliance Committee could resolve in the next calendar year. These actions would likely require collection of empirical data or other information from the appropriate source before developing a resolution or action to be taken. These actions must allow sufficient time for support staff and the Compliance Committee to collect, analyze and act upon the data or information and may require the development of new processes or procedures. In some cases close coordination with the appropriate regulatory bodies or governmental authorities may be necessary.

Long Term – These are issues that will likely require a regulatory filing or a change to the Rules of Procedure and may require a significant amount of data to be collected or metrics developed prior to taking action. Collection of sufficient data and information to determine proposed changes to the Rules of Procedure and implementing those changes, including posting and comment periods as required by the Rules of Procedure, would be necessary and may take a year or longer to reach resolution or fully address and implement any recommended actions.

Issues to be Addressed by the Board of Trustees Compliance Committee

The following issues were identified through the comment period following the May 2008 NERC Board of Trustees meeting and assigned for review by the NERC Compliance Committee. These issues are organized into the broad categories initially suggested when the policy, procedure and process questions were collected and further organized based on similar subjects within those categories as part of the Compliance Committee's work. In a number of cases, initiatives have been undertaken within NERC that either attempt to address the issue or may be related to any resolution of the issue. To assist the Compliance Committee in its discussions on each area, current activities underway at NERC are listed with each grouping of issues.

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Issue 1 - Review the Prioritization of Effort Within the Compliance Program

In doing so, the Compliance Committee should consider the following:

Short Term:

- A. Should the compliance audit program be more targeted?
- B. Should the compliance program be more targeted with respect to standards (i.e., focus only on those standards where the risk to the grid is potentially highest) and/or with respect to registered entities (again, focusing on those entities that pose greater potential risk than others)?
- C. If the compliance audit program is more targeted should NERC make greater use of spot checks to verify self-certification?
- D. Should some entities have a more frequent audit cycle than others?

Current State:

NERC recently issued a draft list of actively monitored standards for 2009 to the Regional Entities for consideration. This list is based on an initial “risk based” approach to evaluate those standards that should be subject to self-certification and review during compliance audits. This list for active monitoring now specifically identifies requirements in the Reliability Standards that if violated pose the most risk to the BPS. Factors used to determine the list of actively monitored Reliability Standards/Requirements include: Violation Risk Factor, Critical Infrastructure Protection, past industry performance, and past audited entity performance.

The NERC Rules of Procedure require audits of those entities with the primary reliability responsibility (reliability coordinators, balancing authorities, and transmission operators) on a three year basis and for remaining entities on a schedule established by NERC and the regions. The other entities are currently scheduled to be audited on a six year cycle. NERC is only one year into the program and changes to the Rules of Procedure will require a longer term effort. These requirements are minimum requirements and audits can occur if NERC or the Regional Entity identifies a need for an unscheduled audit.

Generally, there is support for efforts taken to maintain reasonable workloads for all parties involved in carrying out the CMEP while ensuring that issues with higher risks are addressed. In addition, there is support for targeting higher risk standards and increasing the use of audits and/or spot checks as appropriate.

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Medium Term:

- E. How can the focus on compliance be realigned to devote more effort to serious violations and prevention rather than requiring a significant procedural and paper burden for all violations including minor ones?

Current State:

NERC and the Regional Entities are working on a process and supporting documents to facilitate the issuance of a pro-forma “short-form” or “standardized” settlement agreement for violations determined to be minor in nature, non-repetitive, and not recurring in an organization. The process would facilitate the ability of NERC and the Regional Entities to issue the pro-forma settlement to the entity at the time the violation was discovered. Such an approach will allow processing for a qualifying violation: (i) in as timely a manner as possible; (ii) with sanctioning determined from a more pre-defined penalty range, and; (iii) with less significant paper or negotiation activity burden on the entity and NERC or the Regional Entity. The entity would still have the opportunity to decline this arrangement in favor of having the violation(s) in question addressed through the conventional non-settlement CMEP process route allowing for full due process. Identification of the information that should be collected to verify the effectiveness of these actions will be important to this on-going activity.

There is support for reducing the documentation requirements for stakeholders where the documentation is for less serious violations. This is one potential use of a “short-form” or “standardized” settlement form.

Long Term:

- F. Is three years the right audit cycle for all?
- G. Should NERC compliance consider dealing in detail (i.e., processing violations through to the penalty stage) with only that subset of its Reliability Standards Requirements that have HIGH VRFs?

Current State:

The NERC Rules of Procedure currently approved by FERC require audits of those entities with the primary reliability responsibility (reliability coordinators, balancing authorities, and transmission operators) on a three year basis and for other entities on a schedule established by NERC and the regions. The other entities are currently scheduled to be audited on a six year cycle. NERC and the industry are only one year into the enforceable program with far less than one full cycle completed. Changes to the Rules of Procedure will require a longer term effort.

Collection of data and the development of metrics will provide the necessary basis for demonstrating the most effective audit cycle structure and duration.

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Issue 2 - Review the Compliance Process to Achieve Greater Efficiency, Clarity, Consistency, and Effectiveness

In doing so, the Compliance Committee should consider the following:

Short Term:

- A. Should NERC make public the Penalty Tool?

Current State:

This issue is currently being addressed by the Compliance Committee.

- B. What could the Compliance Program do to better measure and report on reliability improvements achieved as a result of this program?

Current State:

NERC Compliance, Event Analysis, and Reliability Metrics staff develop and post reliability performance information. Additional metrics, along with associated benchmarks, are being developed in cooperation with the Reliability Metrics Working Group.

- C. Do we have appropriate feedback processes from compliance to standards development?

Current State:

NERC reorganized the compliance department this year to add a focus on Compliance Interfaces including the interface with standards development. Additionally, the Regional Entity compliance managers are working to provide feedback and as an example have requested a formal interpretation of a Reliability Standard this year based on actual field experience in its application. Such feedback will continue moving forward.

- D. We recognize the logic of using compliance experience to enhance standards but how do we ensure that appropriate information actually flows and gets acted on?

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NERC utilizes feedback provided by its Regional Coordinators, who either participate directly or serve as observers on compliance audits conducted by Regional Entities, and provides this information to the Standards Development staff at NERC.

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Medium Term:

- E. How can NERC ensure consistency of compliance enforcement across North America?
- F. Should the regions and NERC bring any differences in audit and compliance assessment methodologies for each standard to the BOT CC for resolution in order to ensure uniform application of all standards in all regions?
- G. How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team?

Current State:

This issue is currently being addressed by the Compliance Committee.

From the perspective of the CCC, any difference in methodologies between Regions should be identified to the BOT CC and the CCC. At the direction of the BOT CC, the CCC will review and provide input on any differences.

- H. Measures are intended to allow the responsible entity the latitude to use a variety of methods to demonstrate compliance. How do we ensure that the Regional Entities (and NERC Compliance) are not demanding a specific set of evidence to be produced to demonstrate compliance and ignoring other evidence that was allowed by the original measure?

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In doing so, the Compliance Committee should consider the following:

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- A. Is NERC taking full advantage of the expertise on the Compliance and Certification Committee?

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As part of the CCC charter and in anticipation of the compliance program efforts, the CCC has written and approved procedures for violation hearings, certification hearings, and mediation proceedings. These procedures have been approved by the Board of Trustees. In addition, the CCC recognizes their responsibility to provide oversight and feedback from the stakeholder community in a strategic and concise format. The committee has written and approved procedures offering oversight on NERC's adherence to reliability standards, NERC's adherence to the standards development process, and NERC's adherence to the CMEP. The CCC and subcommittees have, and will, continue to work with guidance from NERC compliance staff and NERC counsel to systematically identify key performance indicators and provide critical feedback from the stakeholder community, thus optimizing the compliance program efforts.

From the perspective of the CCC, the committee is presently engaged to the proper extent and is willing to assist the BOT CC on matters that the BOT CC deems appropriate. One example could be preliminary hearings of Registration similar to the CCC's certification hearing responsibilities.

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- A. The Member Representatives Committee (MRC) is the vehicle that should be used for expressing industry's concerns.
- B. Regional Managers in their role as head of the delegated authority for NERC's statutory activities should not be representing Members' concerns about overall budget levels or increases; they should be pushing back in the areas of common interest where they believe that the balance between Regional Entity and NERC efforts is wrong.
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Section 2 of the CCC charter addresses this issue in part, and provides for various activities related to the perception of the policies, practices, and effectiveness of the Compliance Program.

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Comments received on version 3 of the work plan included possible additional issues that the Compliance Committee may want to consider. These suggestions are included here for possible inclusion in the work plan at a future date.

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2. NERC should consider before-the-fact processes to balance its after-the-fact compliance efforts.
3. NERC needs to clarify the role of the compliance enforcement program with other NERC programs and activities.

Schedule for Completion

Develop first draft of work plan	July 17
Develop draft issue summaries for Issue 2.A. and 2.G.	September 10
Post issue summaries and work plan for comment	September 25
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Compliance Committee meeting <ul style="list-style-type: none">- review comments on first set of issue summaries- reach conclusion on first set of issues- review prioritization and direct next issues development	October 28
Develop additional issue summaries according to prioritization	Nov-Dec
Complete work on short-term high priority issues	December, 2008
Complete work on medium-term issues	December, 2009

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Deliverables

Completed issue summaries.

Report on conclusions reached.

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Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program

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Introduction

Purpose

The *Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program* establishes an approach to address issues raised regarding the NERC Compliance Monitoring and Enforcement Program after its first full year of operation with mandatory and enforceable reliability standards in the United States. The work plan also serves to communicate to the industry participants and governmental authorities to whom NERC is accountable as the ERO how the issues will be prioritized and ultimately considered by the Compliance Committee. This work plan will require continuous input and support by the users, owners, and operators of the bulk power system, the approved Regional Entities, NERC staff, and in some cases governmental authorities.

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Background

Following the May, 2008 NERC Board of Trustees meeting, three Board committees were tasked with reviewing the policies, procedures, and priorities within three NERC program areas. The Compliance Committee was tasked with reviewing the policies, procedures, and priorities within the compliance program. To jump start the work of the Board committees, NERC staff collected suggestions of policy, procedure, and process **questions** that are important for the committees to address. That initial request to provide input on suggested questions went to the Board of Trustees and the Regional Entity executives. Each committee was expected to consider this initial input and to seek other input as it deemed necessary to fully address their appointed program area.

The questions submitted on compliance issues were initially grouped into five areas for consideration by the Compliance Committee. The questions were not organized with the five groups in any particular manner, instead leaving that to the work of the committee. The five areas are:

1. Review the prioritization of effort within the Compliance Program;
2. Review the compliance process to achieve greater efficiency, clarity, consistency, and effectiveness;
3. Reexamine NERC's relationship with FERC regarding the Compliance Program;
4. Review overall stakeholder participation in the compliance process; and
5. Review the relationship between NERC and the Regional Entities on the execution of the Compliance Program.

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Work Plan Strategy

The work plan has been designed to allow for a structured and logical approach to address the issues identified given limited resources of the Compliance Committee, NERC's staff, and the Regional Entities' staffs to complete the review and implementation of outcomes from this work plan.

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This structure allows the establishment of priorities by the committee based on broad categories of issues which are further divided among three general classifications based on the time frame by which an outcome could be realized and an issue resolved. These classifications include:

Short Term - Actions the Compliance Committee could resolve before the end of 2008 [Comment: given the pace, the issues identified as short term may stretch into Q2'09.] by collecting necessary information and rendering a decision. These decisions would not require Rules of Procedure changes or other regulatory actions and can be accomplished quickly within the current framework.

Medium Term – Actions the Compliance Committee could resolve in the next calendar year. These actions would likely require collection of empirical data or other information from the appropriate source before developing a resolution or action to be taken. These actions must allow sufficient time for support staff and the Compliance Committee to collect, analyze and act upon the data or information and may require the development of new processes or procedures. In some cases close coordination with the appropriate regulatory bodies or governmental authorities may be necessary.

Long Term – These are issues that will likely require a regulatory filing or a change to the Rules of Procedure and may require a significant amount of data to be collected or metrics developed prior to taking action. Collection of sufficient data and information to determine proposed changes to the Rules of Procedure and implementing those changes, including posting and comment periods as required by the Rules of Procedure, would be necessary and may take a year or longer to reach resolution or fully address and implement any recommended actions.

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Issues to be Addressed by the Board of Trustees Compliance Committee

The following issues were identified through the comment period following the May 2008 NERC Board of Trustees meeting and assigned for review by the NERC Compliance Committee. These issues are organized into the broad categories initially suggested when the policy, procedure and process questions were collected and further organized based on similar subjects within those categories as part of the Compliance Committee's work. In a number of cases, initiatives have been undertaken within NERC that either attempt to address the issue or may be related to any resolution of the issue. To assist the Compliance Committee in its discussions on each area, current activities underway at NERC are listed with each grouping of issues.

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Issue 1 - Review the Prioritization of Effort Within the Compliance Program

In doing so, the Compliance Committee should consider the following:

Short Term:

- A. Should the compliance audit program be more targeted?
- B. Should the compliance program be more targeted with respect to standards (i.e., focus only on those standards where the risk to the grid is potentially highest) and/or with respect to registered entities (again, focusing on those entities that pose greater potential risk than others)?
- C. If the compliance audit program is more targeted should NERC, make greater use of spot checks to verify self-certification?
- D. Should some entities have a more frequent audit cycle than others?

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Current State:

NERC recently issued a draft list of actively monitored standards for 2009 to the Regional Entities for consideration. This list is based on an initial "risk based" approach to evaluate those standards that should be subject to self-certification and review during compliance audits. This list for active monitoring now specifically identifies requirements in the Reliability Standards that if violated pose the most risk to the BPS. Factors used to determine the list of actively monitored Reliability Standards/Requirements include: Violation Risk Factor, Critical Infrastructure Protection, past industry performance, and past audited entity performance.

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The NERC Rules of Procedure require audits of those entities with the primary reliability responsibility (reliability coordinators, balancing authorities, and transmission operators) on a three year basis and for remaining entities, on a schedule established by NERC and the regions. The other entities are currently scheduled to be audited on a six year cycle. NERC is only one year into the program and changes to the Rules of Procedure will require a longer term effort. These requirements are minimum requirements and audits can occur if NERC or the Regional Entity identifies a need for an unscheduled audit.

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Generally, there is support for efforts taken to maintain reasonable workloads for all parties involved in carrying out the CMEP while ensuring that issues with higher risks are addressed. In addition, there is support for targeting higher risk standards and, increasing the use of audits and/or spot checks as appropriate.

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Medium Term:

- E. How can the focus on compliance be realigned to devote more effort to serious violations and prevention rather than requiring a significant procedural and paper burden for all violations including minor ones?

Current State:

NERC and the Regional Entities are working on a process and supporting documents to facilitate the issuance of a pro-forma “short-form” or “standardized” settlement agreement for violations determined to be minor in nature, ~~non-repetitive, and not recurring~~ in an organization. The process would facilitate the ability of NERC and the Regional Entities to issue the pro-forma settlement to the entity at the time the violation was discovered. Such an approach will allow processing for a qualifying violation: (i) in as timely a manner as possible; (ii) with sanctioning determined from a more pre-defined penalty range, and; (iii) with less significant paper or negotiation activity burden on the entity and NERC or the Regional Entity. The entity would still have the opportunity to decline this arrangement in favor of having the violation(s) in question addressed through the conventional non-settlement CMEP process route allowing for full due process. Identification of the information that should be collected to verify the effectiveness of these actions will be important to this on-going activity.

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There is support for reducing the documentation requirements for stakeholders where the documentation is for less serious violations. This is one potential use of a “short-form” or “standardized” settlement form.

Long Term:

- F. Is three years the right audit cycle for all?
- G. Should NERC compliance consider dealing in detail (i.e., processing violations through to the penalty stage) with only that subset of its Reliability Standards Requirements that have HIGH VRFs?

Current State:

The NERC Rules of Procedure currently approved by FERC require audits of those entities with the primary reliability responsibility (reliability coordinators, balancing authorities, and transmission operators) on a three year basis and for other entities, on a schedule established by NERC and the regions. The other entities are currently scheduled to be audited on a six year cycle. NERC and the industry are only one year into the enforceable program with far less than one full cycle completed. Changes to the Rules of Procedure will require a longer term effort.

Collection of data and the development of metrics will provide the necessary basis for demonstrating the most effective audit cycle structure and duration.

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Issue 2 - Review the Compliance Process to Achieve Greater Efficiency, Clarity, Consistency, and Effectiveness

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In doing so, the Compliance Committee should consider the following:

Short Term:

- A. Should NERC make public the Penalty Tool?

Current State:

This issue is currently being addressed by the Compliance Committee.

- B. What could the Compliance Program do to better measure and report on reliability improvements achieved as a result of this program?

Current State:

NERC Compliance, Event Analysis, and Reliability Metrics staff develop and post reliability performance information. Additional metrics, along with associated benchmarks, are being developed in cooperation with the Reliability Metrics Working Group.

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The Compliance and Certification Committee (CCC) continues to review the concerns over the confidentiality of the penalty tool.

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- C. Do we have appropriate feedback processes from compliance to standards development?

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Post revised issue summaries, first draft of prioritization for remaining issues, and work plan for discussion at October 28 meeting	October 21
Compliance Committee meeting <ul style="list-style-type: none">- review comments on first set of issue summaries- reach conclusion on first set of issues- review prioritization and direct next issues development	October 28
Develop additional issue summaries according to prioritization	Nov-Dec
Complete work on short-term high priority issues	December, 2008
Complete work on medium-term issues	December, 2009

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Version 4
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Deliverables

Completed issue summaries.

Report on conclusions reached.

Version 4
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**ISSUE 2.A.
PENALTY TOOL**

I. ISSUE:

Should the penalty tool be made public?

Related issues are #2.E., #2.G., #2.J., and #5.F.

II. RECOMMENDATION:

To be Determined - Statement of the action recommended by the BOTCC.

III. BACKGROUND:

During 2006 and 2007, NERC developed a software application to provide structured, logical step-by-step assistance to NERC and the Regional Entities (RE) when determining what monetary penalty should be proposed in light of the facts and circumstances or a reliability standards violation. The objective of the tool is to promote uniformity and consistency in penalty determination and overall adherence to the NERC Sanction Guidelines. Numerous discussions with Regional staff and FERC staff provided comments and suggestions that were incorporated into subsequent versions. In addition, feedback from field testing by the REs resulted in corrections and functional upgrades. The penalty tool is considered a guide, and not the final decision. FERC staff informally endorsed the penalty tool for use and recognized that the tool is a tool for enforcement and not subject to discovery. To date, relevant courts have not yet been presented with the arguments on both sides of whether or not the penalty tool is discoverable.

NERC has consistently taken the position that the penalty tool is ERO-confidential with no purpose or appropriate use by the owners, operators, and users of the bulk power system beyond utilizing the tool to determine the possible costs of non-compliance. All relevant information related to penalties and sanctions is contained in the FERC approved Sanction Guidelines (Appendix 4B to the Rules of Procedure). At the present time, NERC staff and regional entity staff are not authorized to release it to registered entities or any other person/entity outside of NERC's or REs' compliance staffs and FERC. See attached letter dated February 1, 2008. While the tool itself has not been released, it is appropriate for NERC and RE staff to explain to registered entities in a narrative fashion the various factors that are considered in arriving at a particular proposed penalty amount.

In considering this issue, the BOTCC is narrowly considering the penalty tool itself and whether or not to make it publicly available. The broader issues of reviewing the sanction guidelines and the relationship of the compliance element "inputs" (VRF and VSL) to the tool are held for possible further discussion, noting that the Board Corporate Governance and Human Resources committee is

discussing the development of VRFs and VSLs as part of their work on the standards process.

During the open comment process, one commenter suggested that the penalty tool should be submitted to FERC for review *and approval* in a formal filing. NERC believes that the FERC order required review and not approval. As stated above, the penalty tool has been reviewed with FERC staff and informally accepted for use in the compliance enforcement program.

IV. OPTIONS AND ANALYSIS:

Option 1: Continue to maintain the confidentiality of the penalty tool. Continue to provide narrative descriptions of the various factors considered in arriving at a particular proposed penalty amount.
[Status Quo]

Pros –

Maintains the current approach and supports the position that relevant information related to penalties and sanctions is contained in the publicly available FERC approved sanction guidelines. Further, this option would not change the approach discussed with FERC staff.

The tool is a guide and not the final decision maker. Making the tool publicly available without a more broad understanding of its background raises the risk of skewing its intent, i.e. that it provides “the answer”. FERC staff informally endorsed the penalty tool for use and recognized that the tool is a tool for enforcement and not subject to discovery.

Cons –

Basically the opposite of the “pros” under Option 2.

Option 2: Make the tool publicly available. Continue to provide narrative descriptions of the various factors considered in arriving at a particular proposed penalty amount.

Pros –

Making the penalty tool publicly available will create greater transparency, consistency, openness, credibility and clarity into the process. In addition it would assist the industry in understanding the basis for a recommended penalty, particularly

in light of the statement often made that “the tool is only a guide and not the final decision”. This greater understanding will avoid unnecessary appeals and possibly reduce the time required to reach a conclusion to settlement discussions. Continuing to provide the narrative descriptions of various factors considered in arriving at a particular penalty amount is important.

Revealing the working of the penalty tool would permit further input on how to improve to tool in the future. One example is the issue of “size of the offender”. Making the tool publicly available would allow input on how this factor is incorporated at the same time eliminating the perception that penalties are determined in an arbitrary manner.

Some entities may use the tool to foster an enterprise-wide compliance mindset, by showing employees the potential fines for non-compliance. Specific examples could be used that go beyond the overarching statement of “\$1 million per day per violation”. Allowing users to run a specific example for their employees would be more meaningful.

Availability of the tool will support some entities in their decision making on whether a potential violation, still in the non-public portion of the enforcement process, may require disclosure to the U.S. Securities and Exchange Commission.

Cons –

Potentially allows entities to determine the cost of compliance as compared to a potential penalty, which could result in a decision to violate a standard rather than meet or exceed all of the requirements.

Changes the direction previously discussed with FERC staff.

V. NERC STAFF POSITION ON RELEASE OF THE PENALTY TOOL:

The NERC Staff continues to very strongly believe that it would be inappropriate to release the penalty tool publicly. All penalties are determined on the basis of the facts and circumstances relevant to the specific violation and violator for which they are being assessed, in accordance with the NERC Sanction Guidelines contained in Appendix 4B to the NERC Rules of Procedure and in consideration of the most recent FERC Policy Statement on Enforcement. Penalties are not determined on the basis of the output of the penalty tool.¹ The penalty tool is a NERC proprietary enforcement tool and is not subject to, or available for, public scrutiny. For any penalty imposed on a user, owner, or

¹ See Oncor Comments at 1 (“The tool is a guide and not the final decision maker”).

operator of the bulk power system, NERC will provide the factors that entered into the determination of that penalty.

Contrary to the positions of certain commenters,² the Federal Energy Regulatory Commission (Commission) did not, in its January 18, 2007 Order,³ require NERC to provide the penalty tool to the Commission for “approval.” Specifically, the Commission stated:

132. NERC indicates that it has not, and is not contemplating, the application of a generic formula for determining penalties. Consistent with the principles articulated in sections 3.8 and 3.9 of the Sanction Guidelines, all penalties will be determined on the basis of the facts and circumstances relevant to the specific violation and violator for which they are being assessed. NERC states that it may develop tools to assist in determining penalties and these tools may use some mathematical formulae; however, penalties will be set by NERC or the Regional Entity pursuant to the Sanction Guidelines, not to the output of the tools.

135. The Commission accepts NERC’s explanation and its provisions for determining penalties with respect to its evaluation of specific facts and circumstances in light of the violation as articulated in section 3.8 and 3.9 of the Sanction Guidelines.

136. With regard to EEI’s concern, we believe that NERC’s filing is sufficiently clear that NERC has not developed tools or formulae at this time, but may do so in the future. *If NERC chooses to develop such tools or formulae in the future, they must be submitted for Commission review.* Regarding Xcel’s concerns, Order No. 672 is sufficiently clear on the ERO’s flexibility in fashioning an appropriate response to a violation, including the discretion to choose among monetary and non-monetary penalties.⁵⁷ [Order No. 672 at P 570.]

January 18 Order at PP 132, 135-36 (2007) (emphasis added). Therefore, it is clear that the Commission directed that any penalty tools or formulae must be provided for Commission “review,” which NERC has done. Oncor correctly recognized this in its comments.⁴ Other commenters are simply wrong in this regard.⁵

² See, e.g., Comments of Bonneville Power Administration (BPA Comments). Other commenters supporting release of the penalty tool include: IRO/RTO Council Standards Review Committee, Regional Entity Management Group, Southern Company, PJM Interconnection, LLC, Con Edison Company of New York, Otter Tail Power Company, CMS Enterprises, Great River Energy, NIPSCO, City of Tallahassee, AEP, Nebraska Public Power District, U.S. Bureau of Reclamation and Edison Electric Institute.

³ *North American Electric Reliability Corp.*, 118 FERC ¶ 61,030 (2007) (January 18 Order).

⁴ See Oncor Comments at 1 (“Making the tool public without a more broad understanding of its background raises the risk of skewing the true intent. FERC staff informally endorsed the penalty tool for use and recognized that the tool is a tool for enforcement and not subject to discovery.”).

⁵ See, e.g., BPA Comments at 4-5.

Case support relied upon by commenters on failure to provide penalty policies⁶ is simply irrelevant and inapplicable. The Commission has approved the criteria used to determine penalties and such criteria is publicly available and transparent. The Commission has likewise agreed with NERC's position that the penalty tool output is not the ultimate determinant of any penalty.

Because NERC has complied with the requirement to provide the penalty tool to the Commission for review, NERC has not violated the statutory requirements for certification of NERC as the Electric Reliability Organization (ERO) under Section 215 of the Federal Power Act.⁷ NERC also believes that it is specious to claim that "FERC's deferral to NERC penalty assessments in which the penalty tool is relied on may cause FERC to violate the Administrative Procedures Act." The Commission does not simply defer to NERC as to the penalty applied in a given case, rather the Commission requires NERC to support the penalty in accordance with the Commission-approved Sanction Guidelines, set forth in Appendix 4B to the NERC Rules of Procedure. The Sanction Guidelines were developed with public input.

As NERC has repeatedly made very clear, the penalty tool is simply a guide to ensure consistency and uniformity in the determination of the penalties. The criteria evaluated by NERC and the Regional Entities is set forth in the NERC Sanction Guidelines, contained in Appendix 4B to the NERC Rules of Procedure. The penalty tool is not a substitute for that review and analysis. NERC and the Regional Entities have enforcement discretion in the calculation of penalties, as evidenced by the fact that 35 of the first 37 filed notices of penalty contained zero dollar penalties for confirmed violations of NERC Reliability Standards by registered entities.

Moreover, contrary to the assertions of commenters,⁸ release of the penalty tool will not result in increased transparency. Rather, it will result in additional issues likely to be litigated in each and every case by registered entities. For example, registered entities will have an incentive to challenge the percentage of credit and the percentage attributed to aggravating factors given for a certain actions by the registered entity. This would impede the enforcement discretion of NERC and the Regional Entities and will only lead to protracted litigation. Notices of penalty are publicly filed at the Commission and registered entities can evaluate them individually and collectively to determine if the Regional Entities are acting in a consistent and uniform manner. As to transparency for a specific penalty, the rationale for a given penalty is provided in the notice of alleged violation, notice of confirmed violation and notice of penalty, as well as settlement agreements.

In addition, release of the penalty tool will create a perverse incentive for registered entities to "calculate" the economic cost of committing a penalty. Arguably, if the cost of compliance is more than the penalty for a given violation, the registered entity would have an improper signal that it is better for the bottom line to violate a given Reliability Standard and to take the risk of being

⁶ See, e.g., BPA Comments at 4-5.

⁷ See, e.g., BPA Comments at 1, 3-4.

⁸ See, e.g., BPA Comments at 5-6.

discovered. Such a result is wholly unacceptable and would significantly jeopardize reliability of the bulk power system. As to claims that the penalty tool would help registered entities understand the “possible consequences of a reliability violation,” Congress made that very clear by stating that penalties could be assessed up to \$1,000,000 per day per violation. The Sanction Guidelines also provide a table of ranges for violations based on the applicable violation risk factor and violation severity level, which may be useful as well.

NERC continues to believe that the penalty tool is a useful guide and helps achieve consistency in penalty application among the regional entities. If NERC alone were determining the penalties, then there may be no need for a penalty tool. Because eight Regional Entities have the delegated authority to determine penalties in the first instance, and in light of the Commission’s directives that penalties be determined consistently and uniformly, the penalty tool is a useful guide in ensuring these goals. It is not a substitute for case-by-case consideration of all relevant facts and circumstances.

**ISSUE 2.A.
PENALTY TOOL**

I. ISSUE:

Should the penalty tool be made public?

Related issues are #2.E., #2.G., #2.J., and #5.F.

II. RECOMMENDATION:

To be Determined - Statement of the action recommended by the BOTCC.

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discussing the development of VRFs and VSLs as part of their work on the standards process.

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IV. **OPTIONS AND ANALYSIS:**

Option 1: Continue to maintain the confidentiality of the penalty tool. Continue to provide narrative descriptions of the various factors considered in arriving at a particular proposed penalty amount.
[Status Quo]

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Revealing the working of the penalty tool would permit further input on how to improve to tool in the future. One example is the issue of “size of the offender”. Making the tool publicly available would allow input on how this factor is incorporated at the same time eliminating the perception that penalties are determined in an arbitrary manner.

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Potentially allows entities to determine the cost of compliance as compared to a potential penalty, which could result in a decision to violate a standard rather than meet or exceed all of the requirements.

Changes the direction previously discussed with FERC staff.

V. NERC STAFF POSITION ON RELEASE OF THE PENALTY TOOL:

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January 18 Order at PP 132, 135-36 (2007) (emphasis added). Therefore, it is clear that the Commission directed that any penalty tools or formulae must be provided for Commission “review,” which NERC has done. Oncor correctly recognized this in its comments.⁴ Other commenters are simply wrong in this regard.⁵

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⁴ See Oncor Comments at 1 (“Making the tool public without a more broad understanding of its background raises the risk of skewing the true intent. FERC staff informally endorsed the penalty tool for use and recognized that the tool is a tool for enforcement and not subject to discovery.”).

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Moreover, contrary to the assertions of commenters,⁸ release of the penalty tool will not result in increased transparency. Rather, it will result in additional issues likely to be litigated in each and every case by registered entities. For example, registered entities will have an incentive to challenge the percentage of credit and the percentage attributed to aggravating factors given for a certain actions by the registered entity. This would impede the enforcement discretion of NERC and the Regional Entities and will only lead to protracted litigation. Notices of penalty are publicly filed at the Commission and registered entities can evaluate them individually and collectively to determine if the Regional Entities are acting in a consistent and uniform manner. As to transparency for a specific penalty, the rationale for a given penalty is provided in the notice of alleged violation, notice of confirmed violation and notice of penalty, as well as settlement agreements.

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⁷ See, e.g., BPA Comments at 1, 3-4.

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discovered. Such a result is wholly unacceptable and would significantly jeopardize reliability of the bulk power system. As to claims that the penalty tool would help registered entities understand the "possible consequences of a reliability violation," Congress made that very clear by stating that penalties could be assessed up to \$1,000,000 per day per violation. The Sanction Guidelines also provide a table of ranges for violations based on the applicable violation risk factor and violation severity level, which may be useful as well.

NERC continues to believe that the penalty tool is a useful guide and helps achieve consistency in penalty application among the regional entities. If NERC alone were determining the penalties, then there may be no need for a penalty tool. Because eight Regional Entities have the delegated authority to determine penalties in the first instance, and in light of the Commission's directives that penalties be determined consistently and uniformly, the penalty tool is a useful guide in ensuring these goals. It is not a substitute for case-by-case consideration of all relevant facts and circumstances.

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**ISSUE 2.G.
POSTING INTERPRETATIONS**

I. ISSUE:

How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team? Should interpretations discussed by the Regional Compliance Managers be posted for public information?

Related issues are #1.A., #1.E., #2.E., #2.F., #2.H., #2.J., and #5.F.

II. RECOMMENDATION:

To be Determined - Statement of the action recommended by the BOTCC.

III. BACKGROUND:

While the original question provided in the mandate to the Compliance Committee addresses “interpretations”, it is important to distinguish between the standards interpretation process and providing guidance on what is expected to demonstrate compliance with reliability standards. Discussion on this issue will be focused on providing guidance with regard to the compliance monitoring and enforcement process.

Furthermore, audit teams do not interpret reliability standards. Rather, they assess the specific implementation of the standards by the registered entity. Both the registered entity and the audit team utilizes the RSAWs as the source document for the applicable standards requirements as well as for any additional clarifications to those requirements provided by FERC or Canadian authorities, in their respective standards approvals. Audit teams do “interpret” the “sufficiency of evidence” that demonstrates compliance.

There are currently several documents and resources available to entities to assist in understanding the reliability standards and to provide guidance on what will be required to show compliance with the standards.

Guidance Documents

Guidance documents are developed by NERC staff and vetted with NERC and Regional staff. The purpose of these documents is to clarify implementation and enforcement issues and provide overall guidance on what is expected of registered entities. These documents are not approved by FERC or the NERC Board of Trustees. The attached “Guidance for Enforcement of CIP Standards” is an example of such a document.

Standards Q&A Report

This report, posted on the NERC website, provides responses to stakeholder questions on standards or compliance issues. Responses are developed by NERC staff with a goal of posting periodic updates. Workload has restricted periodic postings to an annual basis.

Reliability Standard Audit Worksheets

The Reliability Standard Audit Worksheets for approved standards are posted on the NERC website. These worksheets are continuously being improved to incorporate specific information including: NERC Guidance, Regional Entity compliance manager consensus, and excerpts from FERC Orders regarding Reliability Standards and requirements. Going forward, the current plan is to combine the Reliability Standard Audit Worksheet and pre-audit questionnaire into one document per Reliability Standard. This new document will be publicly available to the industry.

Formal Standards Interpretation

The NERC Reliability Standards Development Procedure, approved by the NERC Board of Trustees, includes a process for obtaining a formal interpretation to a reliability standard. Located in the “Special Procedures” section, the interpretation process includes assembling a team of subject experts to address the issue, drafting of a written interpretation, industry balloting, and approval by the NERC Board and appropriate regulatory authorities.

IV. OPTIONS AND ANALYSIS:

Option 1: Continue to develop guidance documents, standards Q&A reports, reliability standard audit worksheets (RSAWs), and formal standards interpretations as done today. Do not post the results of discussions by Regional Compliance Managers on interpretation issues. **[Status Quo]**

Pros –

Continuing the formal standards interpretation process has the advantage of assembling teams of subject matter experts, posting and balloting formal interpretations to assure industry agreement, and provides a transparent process. **This aspect is common to all options.**

The development of RSAWs with pertinent reference information can provide an extremely important reference for registered entities and compliance auditors in support of consistent enforcement.

Cons –

The current RSAW update process is not timely and does not provide enough information.

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

Option 2: Enhance the reliability standard audit worksheets to include a section that provides examples of what constitutes acceptable evidence of compliance with the standard. The information contained in this section of the reliability standard audit worksheet might come from earlier guidance documents, historical audit results, discussions by the Regional Compliance Managers, and prior FERC orders. Continue to develop formal standards interpretations as done today.

Pros –

This option provides timely and complete RSAWs for use by registered entities. This will provide more complete guidance to internal compliance activities, improved clarity on how to reach and maintain compliance, and improve consistency of the results between audit teams.

This option makes public the results of Regional Compliance Manager discussions on what constitutes sufficient evidence to demonstrate compliance.

Cons –

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

Option 3: Develop a procedure to post, at a single location, a searchable set of compliance interpretations. Two sources for these interpretations are the results from meetings of the Regional Compliance Managers and responses to requests for guidance that come in to the Regions or NERC (separate from formal standards interpretations). Continue to develop reliability standard audit worksheets and formal standards interpretations as done today. This option requires combining current efforts underway

within the Regional Entities and NERC, and the posting results in a single location.

Pros –

Promotes greater transparency and a clear understanding of what it takes to comply with the reliability standards, and will result lead registered entities to faster, more consistent and effective efforts to reach and maintain compliance. When appropriate, examples of what **does not** constitute demonstration of compliance can be posted.

This option would provide a systematic approach to resolving questions and providing guidance on approaches to compliance. It avoids answering the same question multiple times in multiple forums. Posting results provides a readily accessible (and easily searchable) database to improve efficiency.

This option makes public the results of Regional Compliance Manager discussions on what constitutes sufficient evidence to demonstrate compliance.

This option would eliminate the need to provide the existing annual (or more frequent) Q&A update.

The actions taken in Option 2 could be combined with this option [new option #4?] to provide timely and complete RSAWs for use by registered entities. This will provide more complete guidance to internal compliance activities and improve consistency of the results between audit teams.

Cons –

Will require additional resources for the effort to be comprehensive enough to be useful to users, owners, and operators.

Does not improve the current development of RAWs.

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

**ISSUE 2.G.
POSTING INTERPRETATIONS**

I. ISSUE:

How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team? Should interpretations discussed by the Regional Compliance Managers be posted for public information?

Related issues are #1.A., #1.E., #2.E., #2.F., #2.H., #2.J., and #5.F.

II. RECOMMENDATION:

~~To be Determined - Statement of the action recommended by the BOTCC.~~

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III. BACKGROUND:

~~While the original question provided in the mandate to the Compliance Committee addresses "interpretations", it is important to distinguish between the standards interpretation process and providing guidance on what is expected to demonstrate compliance with reliability standards. Discussion on this issue will be focused on providing guidance with regard to the compliance monitoring and enforcement process.~~

~~Furthermore, audit teams do not interpret reliability standards. Rather, they assess the specific implementation of the standards by the registered entity. Both the registered entity and the audit team utilizes the RSAWs as the source document for the applicable standards requirements as well as for any additional clarifications to those requirements provided by FERC or Canadian authorities, in their respective standards approvals. Audit teams do "interpret" the "sufficiency of evidence" that demonstrates compliance.~~

There are currently several documents and resources available to entities to assist in understanding the reliability standards and to provide guidance on what will be required to show compliance with the standards.

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Guidance Documents

Guidance documents are developed by NERC staff and vetted with NERC and Regional staff. The purpose of these documents is to clarify implementation and enforcement issues and provide overall guidance on what is expected of registered entities. These documents are not approved by FERC or the NERC Board of Trustees. The attached "Guidance for Enforcement of CIP Standards" is an example of such a document.

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Standards Q&A Report

This report, posted on the NERC website, provides responses to stakeholder questions on standards or compliance issues. Responses are developed by NERC staff with a goal of posting periodic updates. Workload has restricted periodic postings to an annual basis.

Reliability Standard Audit Worksheets

The Reliability Standard Audit Worksheets for approved standards are posted on the NERC website. These worksheets are continuously being improved to incorporate specific information including: NERC Guidance, Regional Entity compliance manager consensus, and excerpts from FERC Orders regarding Reliability Standards and requirements. Going forward, the current plan is to combine the Reliability Standard Audit Worksheet and pre-audit questionnaire into one document per Reliability Standard. This new document will be publicly available to the industry.

Formal Standards Interpretation

The NERC Reliability Standards Development Procedure, approved by the NERC Board of Trustees, includes a process for obtaining a formal interpretation to a reliability standard. Located in the "Special Procedures" section, the interpretation process includes assembling a team of subject experts to address the issue, drafting of a written interpretation, industry balloting, and approval by the NERC Board and appropriate regulatory authorities.

IV. OPTIONS AND ANALYSIS:

Option 1: Continue to develop guidance documents, standards Q&A reports, reliability standard audit worksheets (RSAWs), and formal standards interpretations as done today. Do not post the results of discussions by Regional Compliance Managers on interpretation issues. **[Status Quo]**

Pros –

Continuing the formal standards interpretation process has the advantage of assembling teams of subject matter experts, posting and balloting formal interpretations to assure industry agreement, and provides a transparent process. **This aspect is common to all options.**

The development of RSAWs with pertinent reference information can provide an extremely important reference for registered entities and compliance auditors in support of consistent enforcement.

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Cons –

The current RSAW update process is not timely and does not provide enough information.

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

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Option 2: Enhance the reliability standard audit worksheets to include a section that provides examples of what constitutes acceptable evidence of compliance with the standard. The information contained in this section of the reliability standard audit worksheet might come from earlier guidance documents, historical audit results, discussions by the Regional Compliance Managers, and prior FERC orders. Continue to develop formal standards interpretations as done today.

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Pros –

This option provides timely and complete RSAWs for use by registered entities. This will provide more complete guidance to internal compliance activities, improved clarity on how to reach and maintain compliance, and improve consistency of the results between audit teams.

This option makes public the results of Regional Compliance Manager discussions on what constitutes sufficient evidence to demonstrate compliance.

Cons –

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

Option 3: Develop a procedure to post, at a single location, a searchable set of compliance interpretations. Two sources for these interpretations are the results from meetings of the Regional Compliance Managers and responses to requests for guidance that come in to the Regions or NERC (separate from formal standards interpretations). Continue to develop reliability standard audit worksheets and formal standards interpretations as done today. This option requires combining current efforts underway

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within the Regional Entities and NERC, and the posting results in a single location.

Pros –

Promotes greater transparency and a clear understanding of what it takes to comply with the reliability standards, and will result lead registered entities to faster, more consistent and effective efforts to reach and maintain compliance. When appropriate, examples of what **does not** constitute demonstration of compliance can be posted.

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This option would provide a systematic approach to resolving questions and providing guidance on approaches to compliance. It avoids answering the same question multiple times in multiple forums. Posting results provides a readily accessible (and easily searchable) database to improve efficiency.

This option makes public the results of Regional Compliance Manager discussions on what constitutes sufficient evidence to demonstrate compliance.

This option would eliminate the need to provide the existing annual (or more frequent) Q&A update.

The actions taken in Option 2 could be combined with this option [new option #4?] to provide timely and complete RSAWs for use by registered entities. This will provide more complete guidance to internal compliance activities and improve consistency of the results between audit teams.

Cons –

Will require additional resources for the effort to be comprehensive enough to be useful to users, owners, and operators.

Does not improve the current development of RAWs.

Guidance documents may materially change the substance of key aspects of the performance requirements as approved by the standards development process. As such, these documents need to be carefully developed and an appropriate approval process considered.

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Will require combining current efforts underway within the Regional Entities and posting results in a single location.¶

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Compliance Committee Work Plan to Address Issues Related to the NERC Compliance Monitoring and Enforcement Program

Prioritization for Addressing Questions and Issues

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Questions and Issues Under Development

Penalty Tool

2.A. Should NERC make public the Penalty Tool?

Posting Interpretations

2.G. How can NERC give some assurance to the stakeholders regarding risk exposure during compliance audits and the interpretations made therein by the audit team?

Remaining Questions and Issues

The remaining questions are listed in priority order based on how their resolution supports one or more attributes of the compliance program. These attributes are: Effectiveness (**E**), Transparency (**T**), Consistency (**C**), Efficiency (**Ey**), and Oversight (**O**). Where possible, similar questions have been grouped together under a common issue statement.

I. Balance Between NERC and the Regional Entities (E, C, Ey, O)

5.D. How should NERC balance its role in compliance with regard to the need to partner with the Regional Entities in executing the compliance program versus providing oversight at arm's length? (The emphasis thus far appears to be the latter, which is manifested in what is sensed to be an underlying distrust that the regions are effectively performing their compliance responsibilities.)

5.E. Should the NERC Board Compliance Committee and NERC staff shift from duplicate review and approval of all compliance actions and mitigation plans toward a process that provides deference (through consent approval) to the regional compliance authority on the majority of cases and focuses at the NERC level on the most significant cases that are needed to set precedents and guide consistency?

II. Targeting Compliance Audits (E, Ey, O)

1.A. Should the compliance audit program be more targeted?

1.B. With respect to standards (i.e., focus only on those standards where the risk to the grid is potentially highest) and/or with respect to registered entities (again, focusing on those entities that pose greater potential risk than others)?

1.C. If the compliance audit program is more targeted do we need to make greater use of spot checks to verify self-certification?

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1.E. How can the focus on compliance be realigned to devote more effort to serious violations and prevention rather than requiring a significant procedural and paper burden for all violations including minor ones?

1.G. Should NERC compliance consider dealing in detail (i.e., processing violations through to the penalty stage) with only that subset of its Reliability Standards Requirements that have HIGH VRFs?

III. Audit Cycle (E, Ey, O)

1.D. Should some entities have a more frequent audit cycle than others?

1.F. Is three years the right audit cycle for all?

IV. Consistency (E, C, Ey)

2.E. How can NERC ensure consistency of compliance enforcement across North America?

2.F. Should the regions and NERC bring any differences in audit and compliance assessment methodologies for each standard to the BOT CC for resolution in order to ensure uniform application of all standards in all regions?

5.F. Can the program achieve consistency and efficiency with independent governance of the Regions?

V. Measuring Results of Compliance Program (E, T)

2.B. What could the Compliance Program do to better measure and report on reliability improvements achieved as a result of this program?

VI. Feedback from Compliance to Standards (E, C)

2.C. Do we have appropriate feedback processes from compliance to standards development?

2.D. We recognize the logic of using compliance experience to enhance standards but how do we ensure that appropriate information actually flows and gets acted on?

VII. Demonstrating Compliance (T, Ey)

2.H. Measures are intended to allow the responsible entity the latitude to use a variety of methods to demonstrate compliance. How do we ensure that the Regional Entities (and NERC Compliance) are not demanding a specific set of evidence be produced to demonstrate compliance and ignoring other evidence that was allowed by the original

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measure?

VIII. Policies for Clarity and Transparency (T, Ey)

2.J. What policies can NERC adopt to ensure the compliance program is clear, stable, predictable, and transparent with respect to process and outcomes – even the public whom we are protecting would expect nothing less in the execution of compliance monitoring and enforcement?

IX. Appeals (T, Ey)

2.L. Should the Regional Entity staff be allowed to appeal the decision of a regional hearing body (jury of peers for the registered entity) to NERC if they believe the regional hearing body did not act appropriately?

X. FERC-NERC Relationship (E, O)

3.A. NERC can't be industry's partner and FERC's regulatory instrument simultaneously. What should the relationship between NERC and FERC look like?

XI. Role of CCC (E, Ey)

4.A. Is NERC taking full advantage of the expertise on the Compliance and Certification Committee?

XII. Regional Processes (C)

2.I. Should procedures used by the Regional Entities to implement delegated activities be approved by the appropriate NERC board committee? (An example here is the WECC process developed separately for disputes of registration issues. WECC is the only region with a separate dispute process for registration matters. While standards processes are required to be approved in the delegation agreement, other processes may exist that have not been reviewed or approved by the ERO.)

XIII. Settlements (Ey)

2.K. Should NERC adopt a policy to emulate the FERC's process, as articulated in their latest sanctioning policy, regarding the initiation of settlement arrangements? Specifically, as articulated in Section 2(d) paragraph 34 of that policy, before initiating settlements should the REs be allowed to solicit BOT CC "pre-approval" to negotiate within a potential penalty range? This could be done within the current RDAs where the REs would not be "required" to do this (i.e., they keep their current RDA authority to go it alone); however, they would run risk of the BOT CC rejecting settlement amounts that were not so pre-approved.

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Issues Not Focused on Compliance

- 5.A. The MRC is the vehicle that should be used for expressing industry's concerns.
- 5.B. Regional Managers in their role as head of the delegated authority for NERC's statutory activities should not be representing Members' concerns about overall budget levels or increases; they should be pushing back in the areas of common interest where they believe that the balance between Regional Entity and NERC efforts is wrong.
- 5.C. Should the NERC board approve the scope and other provisions of the Regional Entity Management Group and its various subcommittees as part of the ERO?
- 5.G. An abiding concern is the lack of independent governance for the regions. To varying degrees the Regional Managers are answerable more to their stakeholder Boards than to the mandates of their delegation agreements. This has not been a problem yet in the enforcement arena (and may not be in the future) but it shows itself in the budget process.