

Agenda Board of Trustees

May 6, 2009 | 8–11 a.m.
The Westin Arlington Gateway
801 North Glebe Road
Arlington, Virginia
703-717-6200

Introductions and Chairman's Remarks

Antitrust Compliance Guidelines

Consent Agenda — Approve

*1. Minutes

- [February 10, 2009](#)
- [April 2, 2009](#)

*2. Committee Membership Appointments and Changes

*3. Future Meetings

Regular Agenda

4. President's Report

*5. Reliability Standards

- a. Project 2008-06 — Cyber Security Order 706 — Phase 1 — **Approve**
- b. Changes to Violation Risk Factors for IRO-006-4 — **Approve**
- c. Changes to Violation Severity Levels for FAC-010-2, FAC-011-2, and FAC-014-2 — **Approve**
- d. Errata — **Information Only**
- e. Status of Standards Development — **Information Only**

*6. Compliance Monitoring and Enforcement Program

- a. Compliance and Certification Committee Hearing Procedures — CCCPP-004-1
- b. Hearing Procedures for Use in Appeals of Certification Matters — CCCPP-005-1

- c. Compliance and Certification Committee Mediation Procedures — CCCPP-006-1
- d. Monitoring Program for NERC's Adherence to NERC's Rules of Procedure for Organization Registration and Certification Program — CCCPP-007-1
- e. Compliance and Certification Committee 2009 Work Plan

***7. Three Year Performance Assessment**

***8. Amendment to Standards Development Process of Texas Regional Entity**

***9. Amendments to Operating Reliability Data Agreement**

10. Comments from FERC Chairman Jon Wellinghoff

Committee, Group, and Forum Reports (Agenda Item 11)

[Compliance and Certification Committee](#)

[Critical Infrastructure Protection Committee](#)

[Member Representatives Committee](#)

[Operating Committee](#)

[Personnel Certification Governance Committee](#)

[Planning Committee](#)

[Regional Entity Management Group](#)

[Standards Committee](#)

[Transmission Owners and Operators Forum](#)

Board Committee Reports

11. Corporate Governance and Human Resources

12. Compliance

13. Finance and Audit

- a. Budget to Actual Variance Analysis at March 31, 2009/Statement of Activities — **Approve**
- b. 2008 Draft Audited Financial Statements — **Approve**

14. Technology

* Background Material Included

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.

Draft Minutes Board of Trustees

February 10, 2009
Arizona Grand Resort

Vice Chair Sharon Nelson called to order a duly noticed meeting of the North American Electric Reliability Corporation Board of Trustees on February 10, 2009 at 8 a.m., local time, and a quorum was declared present. The meeting announcement, agenda, and list of attendees are attached as **Exhibits A, B, and C**, respectively.

NERC Antitrust Compliance Guidelines

David Cook, vice president and general counsel, directed participants' attention to the NERC Antitrust Compliance Guidelines included in the agenda.

Election of Chairman

On motion of Sharon Nelson, the board elected John Q. Anderson as chairman of the NERC Board of Trustees. Chairman Anderson assumed the chair and stated "The NERC Board of Trustees, along with the entire industry, would like to thank Richard Drouin for his years of leadership. NERC would not be where it is today without his vision and guidance over the past 10 years."

Executive Session

Chairman Anderson reported that, as is its custom, the board met in executive session before the open meeting, without the CEO present, to review management activities and approve CEO and officer compensation for 2009.

Consent Agenda

On motion of President and CEO Rick Sergel, the board approved the consent agenda, as follows:

Minutes

The board approved the following draft minutes (**Exhibit D**):

- [October 17, 2008 Conference Call](#)
- [October 29, 2008 Meeting](#)
- [November 13, 2008 Conference Call](#)
- [December 12, 2008 Conference Call](#)

Standing Committees

The board approved the proposed appointments and changes to the membership of the standing committees. The board also approved the recommended membership slate from the Personnel Certification Governance Committee Nominating Subcommittee.

Future Meetings

The board approved February 15–16, 2010 (M–T) in Phoenix, Arizona as a future meeting date and location.

President's Report

Mr. Sergel reviewed NERC's accomplishments in 2008 and goals for 2009.

2008

Substantial work has been completed on the standards, in particular the culmination of years of work on the ATC standards. The 2008 plan was ambitious but in large measure delivered; the next step is to collectively, as an industry, consider how to get the rest of the necessary work done, like the fill-in-the-blank standards, in a timely manner.

During the year NERC also received notice of recognition as the ERO from the Alberta Minister of Energy and signed additional agreements with Manitoba, New Brunswick, and Saskatchewan. These agreements are absolutely essential to the success of NERC. We look forward to continuing these efforts in 2009 — particularly with respect to having a mandatory overlay to the standards.

NERC began restructuring our critical infrastructure efforts, and the Electricity Sector Steering Group was formed. This group's goal is to be the go-to group when NERC has policy calls to make. Also, Mike Assante was brought on board as our vice president and chief security officer. Mike has a big job ahead of him, and he has hit the ground running.

Unfortunately we did not resolve our situational awareness effort. The goal is to have a relatively inexpensive, single system, relied upon by all — FERC, NERC, Regions, Reliability Coordinators, etc. We need to have single points of contact, no operational role, properly coordinated with our neighbors to the north, regarding situational awareness only. We will continue to work on this in 2009. Doing nothing is not an option.

Several event analyses were completed in 2008. NERC also issued its first alerts, in the form of recommendations and advisories to the industry; there has been lots of feedback. EEI made comments on continuing to get the right points of contact, which is a good thing because this is all about how to do it better, faster, and more comprehensively. Like so much we do at NERC, each action we take is an opportunity to improve.

In the benchmarking area, we secured our footing on categorizing events, new databases, and a few leading indicators. It may take years for this to be valuable, but our efforts now will pay dividends down the road when we have a robust database upon which to design standards.

Included for the first time in this year's Long-Term Reliability Assessment (LTRA) were operating results. During the year we also asked the Planning Committee and Reliability Assessment Subcommittee to make changes in the LTRA, most notably to the definitions. That mission was accomplished, the value of which will be seen over time. 2008's report represents an opportunity to build on in the years ahead.

NERC also set a course within enforcement to establish a culture of 100 percent compliance with the standards and mitigation plans, while still encouraging self reporting. Collectively that is happening. A backlog still exists, but that is the price to pay for 2008's complete attention to detail. It does leave us needing speed and prioritization, and we have set those as goals in 2009.

We began the process of managing the North American Synchrophasor Initiative as a NERC-wide effort, transitioning it from TVA as a service delivery organization. While NERC would like to have someone else step up and pay for this program, we do not believe that sponsor is forthcoming, and this system is absolutely essential.

Finally, NERC put a marker down on climate change to assure that policy makers consider the reliability of the grid when making decisions on climate change.

2009

NERC's number one priority for the year is on-time delivery of the following goals.

The most important is compliance. We need to eliminate the backlog by creating more output. Things are beginning to move in that direction, and we have started to see actions from FERC that require no compliance filings on our part. The Regional and NERC staffs are playing a major part in this move toward output. The Regions and NERC have reorganized and added staff and these actions are paying off.

The industry plays a part in this also — there needs to be more compliance with the reliability standards. NERC continues to receive, on average, approximately 100 potential violations per month. A fair reply to this request is there are too many “ticky-tack” standards. A major goal for 2009 is to address the priority standards, which we will do by establishing a list of the 12 most important cases we are working on. This list will not be public, but it will be known to all those involved with working on them. We also expect to develop a “speeding ticket” type approach for dealing with lesser, administrative violations.

This “output” goal will apply to everything NERC does including, but not limited to: standards, event analysis, compliance violation investigations, regulatory filings, and meeting agendas.

The second goal involves all things related to Critical Infrastructure Protection. The learning curve is so steep, expectations are so high, and the importance is so great it separates itself from most of what we do. NERC's part in this is to explain, train, and learn what works and what doesn't. The industry's part is to recognize the problem and

make it a priority. We need to measure ourselves on consistency, clarity, and compliance; if you are not in compliance, we have failed at this.

Another priority is to add an independent NERC view to the LTRA which currently is bottom up, and make this clear at the outset. Testing is best done by scenarios, and this effort has already been introduced. However, there are ground rules for this effort; no consultants, no new studies — we need to look to other independent load forecasts, nuclear generation, wind generation, coal plants for comparison only and multiple views.

Improving reliability is always part of the mission. It does us no good if we don't learn. We are beginning a System Protection Initiative Plan, with the priority to address single points of failure this year. Historically, protection system performance has always been a major player in system disturbances, often making the difference between an event being major or minor. We've already seen the rewards from our efforts in relay loadability following the 2003 blackout — there have been only four instances of a “zone-three issue” in North America in the last 30 months.

This will be a multi-year effort (the amount of engineering work necessary and the investment involved will make it lengthy). It will be a coordinated effort for the industry, often working in collaboration with the IEEE Power System Relay Committee, among others, to improve the performance of power system protection systems through fostering technical excellence in protection and control system design, coordination, and practices.

The last of NERC's goals for 2009 is the three-year assessment of the performance of the ERO. This is a regulatory requirement in the U.S., but we view this as a necessary task and we will look at all of NERC from a cross-border point of view. NERC has issued a survey and would like stakeholder input. Once a draft of the report is available, we will post it for public comment. Bear in mind there are two very different tasks on which you measure and compare our performance: 1) how well we establish the line between self and regulatory, and 2) the skill with which we perform the task once we do so. It is important that you comment candidly about NERC's performance — we look forward to it.

Election and Appointment of Officers

Chairman Anderson asked for the election of officers for 2009. On motion of Sharon Nelson the board elected Fred Gorbet as vice chairman and Rick Sergel as president and CEO. On motion of Rick Sergel, the board approved the following additional officers for 2009:

Executive Vice President	David A. Whiteley
Senior Vice President	David R. Nevius
Vice President and Secretary	David N. Cook
Vice President	Gerard Adamski
Vice President	David W. Hilt

Vice President and Chief Information Officer	Lyn P. Costantini
Vice President and Chief Security Officer	Michael J. Assante
Chief Financial Officer and Treasurer	Bruce E. Walenczyk
Assistant Secretary-Treasurer	Julie A. Morgan

ReliabilityFirst Bylaws Amendment

David Cook presented proposed changes to the ReliabilityFirst bylaws, which included:

(1) Changes Relating to Independent Directors

The ReliabilityFirst Board of Directors has determined that the Corporation may need the services of a fourth independent director if the workload of its Compliance Committee increases significantly due to hearings for alleged compliance violations. In order to have the flexibility to appoint another independent director in a timely manner, the Bylaws amendment will give the Board the power by resolution to increase the size of the Board to fifteen (15) members.

(2) Changes Relating to Electronic Transmission

The ReliabilityFirst bylaws provide for actions via written correspondence. Several revisions to the bylaws clarify that the use of electronic transmission (e.g., email, facsimile) are valid methods for providing such written correspondence.

ReliabilityFirst also made several changes to correct typographical/technical issues in the ReliabilityFirst bylaws.

On motion of Ken Peterson, the board adopted the following resolution:

WHEREAS, on December 4, 2008, the Board of Directors of ReliabilityFirst Corporation adopted certain amendments to its bylaws, as set forth in **Exhibit E** (the "Amendments"); and

WHEREAS, on January 12, 2009, ReliabilityFirst Corporation requested that NERC approve the Amendments and file them with the Federal Energy Regulatory Commission ("the Commission") for approval; and

WHEREAS, the NERC Board of Trustees finds that ReliabilityFirst Corporation followed appropriate procedures in adopting the Amendments and that the Amendments are consistent with ReliabilityFirst Corporation's obligations and responsibilities under the delegation agreement between NERC and ReliabilityFirst and otherwise meet the requirements set forth in 18 C.F.R. §39.10 of the Commission's regulations;

RESOLVED, that the NERC Board of Trustees approves the Amendments and directs that they be filed with the Commission for approval.

Compliance Filing for December 19, 2008 FERC Order

David Cook asked the board to approve NERC's draft compliance filing in response to the December 19, 2008 FERC Order approving the amendments to the Compliance Monitoring and Enforcement Program ("CMEP") and revised delegation agreements that NERC had filed in July 2008.

On motion of Thomas Berry, the board adopted the following resolution:

RESOLVED, that the NERC Board of Trustees approves, substantially in the form distributed and posted on January 30, 2009, as modified with respect to Attachment 4 on February 2, 2009, the draft compliance filing to the December 19, 2008 order of the Federal Energy Regulatory Commission, and attachments thereto, as follows:

Attachment 1 — Revised Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure

Attachment 2 — Amendments to the NERC Rules of Procedure

Attachment 3 — Revised Amended and Restated Delegation Agreement between NERC and Florida Reliability Coordinating Council

Attachment 4 — Revised Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. and Scope of Work document for NPCC Compliance Committee

Attachment 5 — Revised Amended and Restated Delegation Agreement between NERC and Reliability *First* Corporation

Attachment 6 — Revised Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council

Reliability Standards

Gerry Adamski, vice president and director of standards, gave a presentation on the Reliability Standards Program (**Exhibit F.**)

A. Project 2006-01 — System Personnel Training

Mr. Adamski presented for approval Reliability Standards PER-005-1 — System Personnel Training; and Reliability Standard PER-004-2 — Reliability Coordination — Staffing, and asked the board to retire PER-002-0 — Operating Personnel Training.

On motion of Paul Barber, the board approved the following resolution:

RESOLVED, the board adopts Reliability Standard PER-005-1 — System Personnel Training and Reliability Standard PER-004-2 — Reliability Coordination — Staffing,

along with the recommended implementation plan, and approves the retirement of Reliability Standard PER-002-0 Requirement R4 and PER-004-1 Requirement R2, with the retirement to be effective upon the effectiveness of PER-005-1 Requirement 3.

B. Project 2006-07 — ATC/TTC/AFC and CBM/TRM Revisions

Mr. Adamski presented for approval Reliability Standard MOD-030-2 — Flowgate Methodology.

On motion of Fred Gorbet, the board approved the following resolution:

RESOLVED, the board adopts Reliability Standard MOD-030-2 — Flowgate Methodology, to replace Reliability Standard MOD-030-1.

C. IRO-006-WECC-1 — Qualified Transfer Path Unscheduled Flow Relief

Mr. Adamski presented for approval Reliability Standard IRO-006-WECC-1 — Qualified Transfer Path Unscheduled Flow Relief.

On motion of Ken Peterson, the board approved the following resolution:

RESOLVED, the board adopts Reliability Standard IRO-006-WECC-1 — Qualified Transfer Path Unscheduled Flow Relief.

D. Project 2008-11 — Interpretation — VAR-002-1a — Generator Operation for Maintaining Network Voltage Schedules

Mr. Adamski presented for approval Reliability Standard interpretation to VAR-002-1a — Generator Operation for Maintaining Network Voltage Schedules.

On motion of Fred Gorbet, the board approved the following resolution:

RESOLVED, the board adopts the proposed interpretation to Reliability Standard VAR-002-1 — Generator Operation for Maintaining Network Voltage Schedules, to be designated VAR-002-1a.

E. Project 2008-13 — Interpretation — TOP-002-2 — Normal Operations Planning, Requirement R11

Mr. Adamski presented for approval Reliability Standard interpretation to Requirement R11 of TOP-002-2 — Normal Operations Planning.

On motion of Paul Barber, the board approved the following resolution:

RESOLVED, the board adopts the proposed interpretation to Requirement R11 of Reliability Standard TOP-002-2 — Normal Operations Planning.

F. Project 2008-16 — TOP-004-2 — Transmission Operations — Violation Severity Levels

Mr. Adamski presented for approval Reliability Standard TOP-004-2 — Transmission Operations — Violation Severity Levels.

On motion of Rick Sergel, the board approved the following resolution:

RESOLVED, the board adopts the proposed conforming changes to the Violation Severity Levels for TOP-004-2 — Transmission Operations.

G. Field Test — Interpretation Process

Mr. Adamski asked the board to endorse a field test for processing requests for formal interpretation utilizing a newly approved procedure by the Standards Committee.

On motion of Ken Peterson, the board approved the following resolution:

RESOLVED, that the board endorses conducting a field test for processing requests for formal interpretation using the procedure developed by the Standards Committee and directs staff to make an informational filing with FERC and applicable governmental authorities in Canada of NERC's intention to use the new procedure, noting the departures from the current interpretations procedure in the Reliability Standards Development Process.

H. [Project 2006-9 — Facility Ratings](#)

Mr. Adamski presented the results of the balloting from Project 2006-9 — Facility Ratings. He described the plan to reballot the standard, with the one requirement that appeared to draw most of the opposition removed. The board discussed the matter at some length. It was the consensus of the board that when the re-balloted standard is presented to the board for approval, it must be accompanied by a memorandum providing the merits of both sides of the question:

- Why FERC staff thinks the omitted requirement will improve reliability;
- Why the industry thinks it will not.

I. Status of Standards Development

Mr. Adamski reviewed the status of key standards development projects with the board.

Recommendations from Corporate Governance and Human Resources Committee on Standards Mandate

Chairman Anderson, as chair of the Corporate Governance and Human Resources Committee, began his report by thanking the members of the committee and others that participated in this project. The Corporate Governance and Human Resources Committee was asked by Chairman Drouin at the May 2008 Board of Trustees meeting to review the standards process. NERC management developed the mandate for that review by soliciting input from members of the board, regions, and stakeholders (**Exhibit G.**) The committee focused its initial attention on three high-priority, short-term issues:

- How the compliance elements of standards should be developed and approved;
- What process should NERC use to develop standards in emergency situations; and

- What should be NERC's relationship with FERC regarding standards development and approval.

A subgroup of committee members and other participants were assigned to each issue, with each subgroup holding several conference calls in August and September to discuss and flesh out their respective Issue Summaries. These summaries were then coordinated and sent to the rest of the committee members and other participants for review and comment.

In October, the entire committee and other participants met by conference call to review and discuss comments on all three Issue Summaries, resolve open issues, and agree on final recommendations and background material for board consideration at its October 29 meeting.

At its October 29 meeting, the board approved committee recommendations on three issues:

- What should be NERC's process for developing standards in national security emergency situations, especially for cyber security?
- How should NERC manage FERC staff participation in Standards Drafting Team activities while maintaining adherence to ANSI principles?
- How should NERC manage FERC staff verbal feedback not associated with directives in an Order?

At that same board meeting, the committee had extensive discussion and stakeholder input on the issue of how Violation Risk Factors (VRFs) and Violation Severity Levels (VSLs) should be developed and approved, but had not yet agreed on a recommendation to the board.

The remaining issues and questions posed in the mandate were judged to already be within the scope of the Standards Committee, its Standards Process Subcommittee, or NERC staff, so the committee concluded that there was no need for it to provide policy guidance for these issues and questions.

Based on input from committee members and stakeholders, and serious deliberation by the committee, the committee recommends that the board take steps to do two things:

- (1) amend the NERC Rules of Procedure to establish the policy framework within which VRFs and VSLs associated with NERC Reliability Standards would be developed and recommended to the board for approval; and
- (2) direct the Standards Committee, with the assistance of NERC staff, to develop the specific modifications to the *Reliability Standards Development Procedure* necessary to implement this policy.

After discussion among trustees and stakeholders, on motion of Sharon Nelson the board adopted the following resolution:

WHEREAS, the Corporate Governance and Human Resources Committee of the NERC Board of Trustees was directed by the board to review and recommend how NERC should develop and approve Violation Risk Factors (VRFs) and Violation Severity Levels (VSLs) associated with NERC Reliability Standards;

WHEREAS, the Federal Energy Regulatory Commission has ruled that VRFs and VSLs are not part of Reliability Standards, and that ruling has not been challenged on appeal;

WHEREAS, the NERC board has an independent requirement and authority to make final decisions on VRF and VSL assignments;

WHEREAS, the use of VRFs and VSLs in Canada will vary from jurisdiction to jurisdiction and will not be automatically applied in any jurisdiction;

WHEREAS, the committee, in formulating its recommendation, posted and actively sought stakeholder input on several options for addressing this policy issue; and

WHEREAS, the committee believes that it is necessary and appropriate to amend the NERC Rules of Procedure to specify the overall policy context in which VRFs and VSLs will be developed and approved, as well as direct the Standards Committee, with the assistance of NERC staff, to develop the necessary procedural changes required in the *Reliability Standards Development Procedure* to implement the intent of this policy framework, while ensuring that these changes present no new gaps, conflicts, or inconsistencies.

RESOLVED, that the Board of Trustees concludes that the amended NERC Rules of Procedure should be based on the following basic tenets: (1) stakeholders and NERC staff will be provided ample opportunity to provide input on VRFs and VSLs as they are developed concurrently and in parallel with the associated Reliability Standards; (2) Reliability Standards will be balloted independent of the VRFs and VSLs; (3) a separate, non-binding poll of industry stakeholders will be conducted to gather input on proposed VRFs and VSLs; and (4) the process for finalizing VRFs and VSLs to be presented to the board for approval should not present the board with a “governance” dilemma; i.e., the process should not request a formal ballot or vote of the stakeholders and the board may accept, reject, or modify the VRF and VSL assignments recommended by NERC staff; and

FURTHER RESOLVED, that the NERC Board of Trustees: (1) directs management to take all steps necessary to propose and approve amendments to Sections 320 and 1403 of the NERC Rules of Procedure as set forth in (**Exhibit H**), as recommended by the Corporate Governance and Human Resources Committee, following the procedure described in Sections 1401 and 1402; (2) directs management to file the approved revised Sections 320 and 1403 with applicable governmental authorities in the United States and Canada; and (3) directs the Standards Committee, with the assistance of NERC staff, to develop all necessary conforming procedural changes to the *Reliability Standards Development Procedure* to implement these changes.

Committee, Group, and Forum Reports

Compliance and Certification Committee

Chairman Tom Abrams reported the committee has posted its confidentiality protocol and comments are due March 19. He also stated the committee has developed its first work plan, and continues to monitor NERC's accordance with the Rules of Procedure and stakeholder perception.

Critical Infrastructure Protection Committee

Chairman Barry Lawson informed the board the committee continues to work with NERC CSO Michael Assante. Plans are being made for a joint CIPC and Electricity Sector Steering Group (ESSG) meeting. Mr. Lawson reported CIPC will be meeting with its government counterparts in May, and will ask the ESSG for guidance prior to the meeting. He also stated the CIPC Executive Committee continues to work with Mr. Assante on the alerts process, giving feedback and advice. Mr. Lawson reported that recent Webcasts have been helpful for the industry. Finally, CIPC will be providing feedback on the cyber risk initiative.

Member Representatives Committee

Chairman Steve Naumann reported the MRC performed their duty of electing the trustees in accordance with the bylaws. He stated the committee is discussing the possibility of holding a workshop dealing with NERC's three-year performance assessment.

Operating Committee

Chair Gayle Mayo informed the board the OC is working to increase their involvement in assessments and metrics, as well as undertaking an effort to review operating reliability tools. Ms. Mayo further stated the committee is expanding its 2009–10 workplan for greater involvement in Events Analysis Working Group, and has also been asked to get more involved in the standards process.

Planning Committee

Chairman Scott Helyer reported the Integration of Variable Generation Task Force is continuing its good work. He stated the Special Protection and Control Task Force has been an integral part of the PC and has now become a subcommittee. Mr. Helyer further reported that the PC has formed new task forces to explore the issue of generation availability investigating methods. The committee has also been asked to assist in the reliability impact of the climate change issues that have been addressed. The OC may need to get involved in this task also. Mr. Helyer informed the board that the Reliability Assessment Guidebook has been posted for public comment and the committee has received comments and will address them. Finally, Mr. Helyer reported the PC had received a recommendation from the Reliability Assessment Subcommittee on capacity margins and how they are defined in assessments. The PC agreed to move to the term reserve margins instead of capacity margins.

Regional Entity Management Group

Chairman Dan Skaar reported on the development of common performance expectations between NERC and the Regions, and stated the Regions are committed to the process of

transparency and feedback. Mr. Skaar also announced the new chairman of the REMG is Gerry Cauley, and Louise McCarren is vice chair.

Electricity Sector Steering Group

Janice Case reported this group was assembled last summer to provide strategic and policy guidance to the Electricity Sector. In September 2008 the ESSG had its first in-person meeting in Washington, D.C. In December 2008 the group met to discuss a number of things with the focus on tier 1 and tier 2 lists of critical infrastructure and key resources. The ESSG went with a number of CEOs, including Canadian representation, to a classified meeting with government officials; the group gained top secret sector clearances. Government officials were very candid about the threats to the electric sector, and shared insights.

Standards Committee

Chairman Scott Henry reported he was reelected as chairman of the committee and Allen Mosher was elected vice chairman. Mr. Henry thanked the board for approving the interpretation field test. Finally, he asked for board support on three priority items:

- Continued work on the cyber security process;
- A Roles and Responsibilities document the committee is working on; and
- NERC's responsiveness to FERC orders within the 30 days for rehearing or clarification.

NAESB

Michael Desselle reported NAESB and NERC continue working on the joint development of standards.

Transmission Owners and Operators Forum

Sue Ivey, Exelon, reported there are now 51 members of the Forum. Ms. Ivey stated the Forum is working with Mike Assante to provide a pool of subject matter experts for developing ES-ISAC alerts and mitigation procedures. The Forum's Vegetation Management Practices Group has implemented new vegetation management inspection practices and practices for developing vegetation management annual work plans. Ms. Ivey informed the board the Forum also continues to discuss compliance topics. Finally, she reported the Forum has added Barbara Bogenrief to its staff as office manager and Mark Fidrych to manage the Peer Review and Metrics Program.

Board Committee Reports

Finance and Audit

Chairman Bruce Scherr reported that on the February 3, 2009 FAC conference call the committee:

- Approved minutes from October 14, November 24, and December 12, 2008 conference calls.

- Reviewed and approved the FAC Annual Calendar of Activities, which was modified to include a review of assumptions and guidelines for the Business Plan and Budget in the first quarter and a review of the Form 990 tax return in the second quarter.
- Reviewed and approved the FAC Mandate which was also modified to include a review of the Form 990 tax return.
- Reviewed and approved the 2010 Business Plan and Budget Timeline.
- Reviewed and approved the unaudited December 31, 2008 Statement of Activities.
- Reviewed the regional entities' consolidated December 31, 2008 unaudited Statement of Activities.
- Reviewed the collective results of the annual self-assessment and discussed two areas receiving a "2" rating. The first area had to do with receiving a report from management assessing internal controls. In the future, this report will be produced in conjunction with a to-be implemented internal audit function. Secondly, a review of the financial statements of the 401(k) plan will be implemented along with Investment Policy Guidelines.
- Reviewed and approved an engagement letter with Mercadien, P.C. to conduct the audit of our 2008 financial statements.

On motion of Bruce Scherr, the board approved the fourth quarter statement of activities.

Compliance

Chairman Paul Barber reported the committee is fully engaged with its duties to monitor and participate in the compliance process. He stated there are still backlogs, but they appear to be coming under control now, and there is evidence of much regional activity. He informed the board the committee continues to push forward in working on the special mandate items related to the CMEP.

Corporate Governance and Human Resources

Chairman John Anderson reported that in the open session of the CGHRC the committee reviewed all of the committee mandates and accepted all the changes. On motion of John Q. Anderson, the board approved the proposed revisions to the mandates of the Corporate Governance and Human Resources Committee, the Finance and Audit Committee, and the Technology Committee (**Exhibit I.**)

Chairman Anderson also reported the committee reviewed the composition of the board committees (**Exhibit J.**) On motion of John Q. Anderson, the board approved the proposed board committee membership and chairs for 2009.

The committee also recommended that the board approve the annual contribution to the Defined Contribution Plan for 2008. On motion of John Q. Anderson, the board approved the following resolution:

RESOLVED, that on recommendation of the Corporate Governance and Human Resources Committee, the board authorizes the 2008 contribution equal to 10 percent of eligible compensation to the Defined Contribution portion of the Savings and Investment Plan for all eligible employees be authorized for the plan year ending December 31, 2008.

Chairman Anderson informed the board the committee reviewed the board self-assessment and there were several items taken under advisement. The committee also reviewed the individual committee self-assessments.

In closed session the committee approved executive compensation for NERC senior management other than the CEO. President and CEO Rick Sergel's compensation was approved during a closed meeting of the board.

Technology

Chairman Jim Goodrich reported on the committee's February 2, 2009 conference call. He stated the major issue that was addressed was the North American Synchrophasor Initiative (NASPI), and the committee was joined by Terry Boston. The committee discussed its leadership model and reviewed the 2008 progress report of NASPI project. Chairman Goodrich also briefed the board on the status of NERC's reliability tools and the OC's continuing support on the subject.

Closing Remarks

Chairman Anderson expressed his appreciation for the support NERC continues to receive from the stakeholders. As he assumes the chairmanship, he stated the following:

- "NERC is committed to maintaining and improving reliability;
- Continuing stakeholder input and participation is critical to NERC's success;
- NERC will maintain a North American focus to its activities."

Adjournment

There being no further business, Chairman Anderson terminated the meeting at 11:20 a.m.

Submitted by,



Corporate Secretary

Draft Minutes Board of Trustees Conference Call

April 2, 2009 | 9:30 a.m. EDT

Chairman John Anderson convened a duly noticed open meeting by conference call of the Board of Trustees of the North American Electric Reliability Corporation on April 2, 2009 at 9:35 a.m., EDT. As required by the bylaws of the Corporation, dial-in listen-only access was provided to members of the Corporation and the public for the meeting. The meeting notice and agenda are attached as **Exhibits A** and **B**, respectively.

Trustees present on the call in addition to Chairman Anderson were Paul Barber, Tom Berry, Janice Case, Jim Goodrich, Fred Gorbet, Sharon Nelson, Ken Peterson, Bruce Scherr, Jan Schori, and Rick Sergel. Additional attendees are listed in **Exhibit C**.

Antitrust Compliance Guidelines

David Cook, vice president and general counsel, directed the participants' attention to the NERC Antitrust Compliance Guidelines.

Integration of Variable Generation Task Force (IVGTF) Report

Chairman Anderson began the discussion by thanking Warren Frost, IVGTF Chairman, for his leadership in putting together such a high-quality report.

Mark Lauby, director of reliability assessment and performance analysis, summarized the IVGTF Report, which had been circulated to board members previously. He further explained the task force has prepared a detailed work plan to extend the Planning and Operating Committee's activities towards: changes required for planners and operators regarding practices, techniques, and tools; deeper understanding of the impacts of the emerging issues associated with variable generation, such as storage and plug-in hybrid electric vehicles (PHEV), and further review of NERC's Reliability Standards, including enhancements to existing or development of new standards and extending the industry's educational process. Mr. Frost described the extensive stakeholder process the task force followed in preparing the report.

Chairman Anderson then led the board through a section-by-section review of the report. Board members asked staff and Mr. Frost several questions about various aspects of the report and made a number of suggestions for strengthening the report and sharpening the focus. Staff suggested

languages changes to deal with the issues raised. After extended discussion and on motion of Paul Barber, the board approved publication of the report, modified as described during the course of the discussion, as a NERC report.

Policy on Accounting, Financial Statement, and Budgetary Treatment of Penalties Imposed and Received for Violations of Reliability Standards

Bruce Walencyk, NERC CFO, presented a proposed policy statement on Accounting, Financial Statement, and Budgetary Treatment of Penalties Imposed and Received for Violations of Reliability Standards for approval (**Exhibit D.**) He reported the policy had been vetted through a lengthy process with the Regional Entities and the Finance and Audit Committee (FAC) to come up with a fair process that maintained the confidentiality of compliance matters prior to the time they become confirmed violations.

Bruce Scherr, FAC Chairman, thanked Mr. Walencyk and the Regional Entities for their work on the policy and confirmed that FAC had approved the policy on a March 9, 2009, conference call.

After discussion, on motion of Fred Gorbet, the board approved the draft policy statement in the form presented.

There being no further business, the call was terminated at 10:40 a.m.

Submitted by,



David N. Cook
Secretary

Committee Membership Appointments and Changes

Board Action Required

Approve the following changes

Operating Committee

Cooperative — Shane Sanders, Manager of System Operations, Southwest Transmission
Cooperative

Future Meetings

Board Action Required

Approve May 11–12, 2010 (Tu–W) in Washington, D.C. as a future meeting date and location

Information

The board has approved the following future meeting dates and locations:

- August 4–5, 2009 — Winnipeg, Manitoba, Canada (Tu–W)
- November 4–5, 2009 — Atlanta, Georgia (W–Th)
- February 15–16, 2010 — Phoenix, Arizona (M–Tu)

Reliability Standards

Board Action Required

Adopt reliability standards in the following areas:

- a. Project 2008-06 — Cyber Security Order 706 — Phase 1 — Approve
- b. Changes to Violation Risk Factors for IRO-006-4 — Approve
- c. Changes to Violation Severity Levels for FAC-010-2, FAC-011-2, and FAC-014-2 — Approve
- d. Errata — Information Only
- e. Status of Standards Development — Information Only

Information

NERC's Reliability Standards Program works through the Standards Committee (SC) to develop and maintain continent-wide reliability standards, utilizing the reliability standards development process. NERC is also responsible for the review of proposed Regional Entity standards. The program also has primary responsibility for managing NERC's relationship with the North American Energy Standards Board, which develops business practice standards and communications protocols for electric and gas wholesale and retail market participants. The standards program depends on the active involvement of industry subject matter experts to both recommend and develop reliability standards.

a. Project 2008-06 — Cyber Security Order 706 Phase 1 — Approve

Actions

Adopt CIP-002-2 through CIP-009-2

Retire CIP-002-1 through CIP-009-1

Per the implementation plan, direct staff to file these revised standards with FERC and applicable governmental authorities in Canada.

Background

The suite of critical infrastructure protection standards, CIP-001-1 through CIP-009-2 require users, owners, and operators of the bulk power system to establish policies, plans, and procedures to safeguard physical and electronic access to control systems, to train personnel on security-related matters, to report security incidents, and to prepare for recovery from a cyber incident. These collective standards are intended to protect the bulk power system from malicious cyber attacks. As outlined in FERC Order No. 706 issued in January 2008, FERC identified a number of areas that required modification to further clarify or make the requirements more stringent. These proposed modifications serve to improve the overall quality and robustness of the standard in order to effectively achieve their vital reliability objective. To better address critical infrastructure protection for the electric infrastructure in general, and in part to respond to FERC's Order, NERC initiated an aggressive effort in July 2008 that included responding to FERC's concerns through an intensive standards development effort.

Accordingly, on July 10, 2008, the SC approved the Standard Authorization Request (SAR) for developing revisions to the following Critical Infrastructure Protection Cyber Security standards:

[CIP-002-1 — Cyber Security — Critical Cyber Asset Identification](#)
[CIP-003-1 — Cyber Security — Security Management Controls](#)
[CIP-004-1 — Cyber Security — Personnel and Training](#)
[CIP-005-1 — Cyber Security — Electronic Security Perimeter\(s\)](#)
[CIP-006-1 — Cyber Security — Physical Security](#)
[CIP-007-1 — Cyber Security — Systems Security Management](#)
[CIP-008-1 — Cyber Security — Incident Reporting and Response Planning](#)
[CIP-009-1 — Cyber Security — Recovery Plans for Critical Cyber Assets](#)

A Standards Drafting Team (SDT) was appointed by the SC on August 7, 2008 to develop these revisions as part of Project 2008-06 — Cyber Security Order 706. The SDT for Project 2008-06 has the responsibility to review each of the reliability standards identified above to ensure they conform to the latest version of the [ERO Rules of Procedure](#) and the [Reliability Standards Development Procedure](#), address all of the directed modifications identified in the [FERC Order 706](#), and consider additional issues identified by stakeholders in the SAR comment process. As part of this project, the SDT will also consider these other cyber-related structures, standards, guidelines, and activities:

- The National Institute of Standards and Technology (NIST) Security Risk Management Framework (includes General Accounting Office (GAO), Office of Management and Budget (OMB), and Federal Information Processing Standards (FIPS)).
- Other cyber security-related documents such as NIST, International Organization for Standardization (ISO) 27000 Family, Critical Infrastructure Protection Committee (CIPC) Risk Assessment Guideline, MITRE Corporation technical report, Department of Homeland Security (DHS), National Laboratories papers, Department of Energy (DOE) 417, International Electrotechnical Commission (IEC), International Society of Automation (ISA), etc.
- Coordination work between FERC, Nuclear Energy Institute (NEI), and Nuclear Regulatory Commission (NRC) in regard to the nuclear facility exemption issue with respect to regulatory gaps and modify, as necessary, the standards to reflect current determinations.

Because of the extensive scope and varying complexity of the issues and work in these revisions, the drafting team decided on a multiphase approach for revising the CIP standards. The presentation of Version 2 of the CIP-002 through CIP-009 reliability standards for board adoption represents Phase I of the project.

Summary of Phase I Revisions

Phase I includes necessary modifications to CIP-002-1 through CIP-009-1 to comply with the near-term specific directives included in FERC Order 706. In particular, the SDT addressed the directive in FERC Order 706 that the "...ERO modify the CIP Reliability Standards through its Reliability Standards development process to remove references to reasonable business judgment before compliance audits begin in 2009." Compliance audits are slated to begin no sooner than June 30, 2009. In addition, a number of other directives included in FERC Order 706 that apply to specific standards were also addressed in Phase I modifications and are outlined below. More contentious issues to be addressed by the SDT associated with the modification of this set of

standards will be addressed in subsequent phases of Project 2008-06 — Cyber Security Order 706.

The following provides a brief summary of the proposed modifications to this set of standards as Phase I of Project 2008-06 — Cyber Security Order 706. For all CIP-002-1 through CIP-009-1 standards the following general modifications are proposed:

- As directed in Order 706:
 - Purpose Section: Removed the term “reasonable business judgment.”
 - Where applicable, removed the phrase “acceptance of risk.”
- To comply with ERO Rules of Procedure:
 - Applicability: Added Regional Entity in place of Regional Reliability Organization.
- Versioning:
 - Phase I changes to the existing version will be reflected as CIP-002-2 through CIP-009-2.
- Effective Date section updated to integrate the proposed implementation timeframe for CIP-002-2 through CIP-009-2.
- Administrative edits to reflect changes in numbering references.
- Requirements:
 - Where there were subrequirements that were numbered, but were not all required, the numbers were replaced with “bullets.”
- Measures:
 - The format of the measures was modified to conform to the current format used in standards.
- Compliance Elements:
 - The compliance elements of the standard were updated to reflect the language used in the ERO Rules of Procedure.
 - The term, “Compliance Monitor” was replaced with “Compliance Enforcement Authority.”
 - The term, “Regional Reliability Organization” was replaced with “Regional Entity.”
 - The Compliance Monitoring and Enforcement Processes were added.
 - The Monitoring Time Period and Reset Periods were marked as “not applicable.”
 - The Data Retention section was updated.

In addition to the changes noted above, the following modifications are proposed to apply to specific CIP standards as noted below:

CIP-002 Critical Cyber Asset Identification

- As directed in Order 706:
 - R4. Annual Approvals: Adds that the senior manager shall annually review and approve the risk-based assessment methodology in addition to the list of Critical Assets and Critical Cyber Assets as required in prior version.

CIP-003 Security Management Controls

- Simplification:
 - R2.1. Leader Identification: Removes the need for business phone and business address designation.
- As directed in Order 706:
 - Applicability 4.2.3.: Requires Responsible Entities having no Critical Cyber Assets to comply with CIP-003-2 R2.
 - R2. Leadership: Require the designation of a single manager, with overall responsibility and authority for leading and managing the entity's implementation of CIP. The word "authority" is an addition.
 - R2.3.: Permits the assigned senior manager to delegate authority in writing for specific actions, where allowed, throughout the CIP standards.

CIP-004 Personnel and Training

- Clarification to ensure that requirement must be implemented:
 - R1. Awareness: Explicitly requires implementation of Awareness Program.
 - R2. Training: Explicitly requires implementation of the Training Program.
- As directed in Order 706:
 - R2.1. Training: Personnel having access to Critical Cyber Assets must be trained prior to their being granted such access, except in specified circumstances, such as an emergency. This replaces the allowance for 90 days to complete the training and adds a provision for emergency situations.
 - R3. Personnel Risk Assessment: Personnel risk assessment shall be conducted prior to granting personnel access to Critical Cyber Assets except in specified circumstance such as an emergency. This replaces the allowance for 30 days to complete personnel risk assessment and adds a provision for emergency situations.

CIP-005 Electronic Security Perimeter(s)

- Clarification:
 - Clarifies the scope of this requirement to include Cyber Assets used in either access control and/or monitoring to the Electronic Security Perimeter.

- Clarification to ensure that requirement must be implemented:
 - R2.3. Electronic Access Controls: Explicitly requires the implementation of the procedure to secure dial-up access to the Electronic Security Perimeter.

CIP-006 Physical Security

- Restructuring of Requirements:
 - Former requirement R1.8. moved and incorporated into new Requirement R2. (Protection of Physical Access Control Systems) as Requirement R2.2.
 - Other modifications to Requirements R1.1. through R1.8. for readability.
- Clarifications to ensure that the following requirement must be implemented:
 - R1. through R1.8. Physical Security Plan: All requirements of the Physical Security Plan must be implemented.
- Additional Clarifications:
 - R1.6. Escorted Access: Clarified that the escort within a Physical Security Perimeter should continually remain with the escorted person.
 - R1.8. Annual Review: Formerly Requirement R1.9.
 - R2.2.: (Formerly R1.8.) Changed references to requirement numbers as appropriate.
 - R4. Physical Access Controls: (Formerly Requirement R2.) Changes enumeration of subrequirements to bulleted list.
 - R5. Monitoring Physical Access: (Formerly Requirement R3.) Changes enumeration of subrequirements to bulleted list. Changes references to other requirements as appropriate.
 - R6. Logging Physical Access: (Formerly Requirement R4.) Changes enumeration of subrequirements to bulleted list. Changes references to other requirements as appropriate.
 - R7.: (Formerly Requirement R5.)
 - R8. Maintenance and Testing: (Formerly Requirement R6.) Changes references to other requirements as appropriate.
- As directed in Order 706:
 - R1.7. Updates to the Physical Security Plan: Shortens the time for updates to the Physical Security Plan to 30 calendar days rather than 90 days and adds the word “completion” to the requirement.
 - R1. Physical Security Plan: Changes the term “a senior manager” to “the senior manager.”
- Requirements Added:
 - R2. Protection of Physical Access Control Systems: Moves requirement to protect Physical Access Control Systems out of Requirement R1. into its own requirement and excludes hardware at the Physical Security Perimeter access

point such as electronic lock control mechanisms and badge readers from the requirement.

- R2.1. Protection of Physical Access Control Systems: Adds a requirement that Physical Access Control Systems be protected from unauthorized access.
- R3. Protection of Electronic Access Control Systems: Adds that cyber assets used in access control and/or monitoring of the Electronic Security Perimeter shall reside within an identified Physical Security Perimeter.

CIP-007 Systems Security Management

- As directed in Order 706:
 - R2.3. Ports and Services: Removal of the term “or an acceptance of risk.”
 - R3.2. Security Patch Mgt.: Removal of the term “or an acceptance of risk.”
 - R4.1. Malicious Software Prevention: Removal of the term “or an acceptance of risk.”
 - R9. Documentation Review and Maintenance: Shortens the time frame to update documentation in response to a system or control change from 90 to 30 calendar days and further clarifies this timeframe to begin after such change is complete.
- Clarifications to ensure that requirements must be implemented:
 - R2. Ports and Services: Explicitly requires the implementation of a process to ensure only required ports and services are enabled.
 - R3. Security Patch Mgt.: Explicitly requires the implementation of Security Patch Management program.
 - R7. Disposal and Redeployment: Explicitly requires the implementation of Cyber Asset disposal and redeployment procedures.

CIP-008 Incident Reporting and Response Planning

- As directed in Order 706:
 - R1.4. Updating the Cyber Security Incident Response Plan: Shortens the timeframe to update the Incident Response Plan from 90 to 30 calendar days.
 - R1.6. Testing of the Incident Response Plan: Adds language to clarify that testing need not require a responsible entity to remove any systems from service.
- Clarifications to ensure that requirements must be implemented.
- R1. Incident Response Plan: Explicitly requires implementation.

CIP-009 Recovery Plans for Critical Cyber Assets

- As directed in Order 706:
 - R3. Change Control: Shortens the timeframe for communicating updates to Critical Cyber Asset recovery plans from within 90 to within 30 calendar days of the change being completed.

Implementation Plan for CIP-002-2 through CIP-009-2

Once these standards become effective, the responsible entities identified in the Applicability section of the standard must comply with the requirements. These include:

- Reliability Coordinator
- Balancing Authority
- Interchange Authority
- Transmission Service Provider
- Transmission Owner
- Transmission Operator
- Generator Owner
- Generator Operator
- Load Serving Entity
- NERC
- Regional Entity

The proposed effective date for these modified standards is the first day of the third calendar quarter (i.e., a minimum of two full calendar quarters, and not more than three calendar quarters) after applicable regulatory approvals have been received (or the reliability standard otherwise becomes effective the first day of the third calendar quarter after board adoption in those jurisdictions where regulatory approval is not required.)

Newly registered entities must comply with the requirements of CIP-002-2 through CIP-009-2 within 24 months of registration. The sole exception is CIP-003-2 Requirement R2, where the newly registered entity must comply within 12 months of registration.

The SDT proposes an implementation plan to address newly identified Critical Cyber Assets as well. Three specific classes of categories for newly identified Critical Cyber Assets are described. The plan provides an implementation schedule with “compliant” milestones for each requirement in each category. All timelines are specified as an offset from the date when the Critical Cyber Asset has been newly identified.

Development History

The SDT posted the Phase I changes to the CIP standards for a 45-day comment period from November 21, 2008–January 5, 2009. There were 52 sets of comments, including comments from more than 100 individuals from over 55 organizations representing 9 of the 10 industry segments. In response, the SDT made only clarifying changes to the standards and catalogued a number of issues to be considered in future phases of the project.

The proposed standards were presented for pre-ballot review from March 3, 2009–April 1, 2009. NERC conducted the initial ballot from April 1, 2009–April 10, 2009. With 91.90 percent of the ballot pool participating, the proposed standards achieved an 84.06 percent weighted segment approval rating. However, there were comments submitted with the negative ballots, which initiated the need for a recirculation ballot. The standard drafting team is reviewing the ballot

comments and will be presenting its response to those comments as part of the recirculation ballot that will be completed prior to the board meeting. The discussion of these comments and the final ballot results will be presented at the meeting.

b. Changes to Violation Risk Factors for IRO-006-4 — Approve

Action

Approve modifications to violation risk factors (VRFs) pertaining to Requirements R1.–R4. in the approved IRO-006-4 — Reliability Coordination — Transmission Loading Relief Reliability Standards as directed by FERC in Order No. 713-A. Direct staff to file the modified VRFs with FERC and applicable governmental authorities in Canada.

Background

On March 19, 2009, FERC issued Order No. 713-A approving IRO-006-4 — Reliability Coordination — Transmission Loading Relief reliability standard to become mandatory and enforceable in the United States. In paragraph 72 in the Order, FERC directed NERC to modify VRFs for Requirements R1., R2., R3., and R4. to “high” in accordance with FERC directives in the Order and to submit these modified VRFs within 60 days, or by May 18, 2009.

Accordingly, NERC proposes the board approve the following modifications to the VRF assignments for these four requirements in IRO-006-4 consistent with and in compliance with FERC Order No. 713-A:

Requirement	Requirement Text	Original Approved VRF	Proposed Revised VRF
R1.	A Reliability Coordinator experiencing a potential or actual SOL or IROL violation within its Reliability Coordinator Area shall, with its authority and at its discretion, select one or more procedures to provide transmission loading relief. These procedures can be a “local” (regional, interregional, or sub-regional) transmission loading relief procedure or one of the following Interconnection-wide procedures.	MEDIUM	HIGH
R2.	The Reliability Coordinator shall only use local transmission loading relief or congestion management procedures to which the Transmission Operator experiencing the potential or actual SOL or IROL violation is a party.	LOWER	HIGH

R3.	Each Reliability Coordinator with a relief obligation from an Interconnection-wide procedure shall follow the curtailments as directed by the Interconnection-wide procedure. A Reliability Coordinator desiring to use a local procedure as a substitute for curtailments as directed by the Interconnection-wide procedure shall obtain prior approval of the local procedure from the ERO.	LOWER	HIGH
R4.	When Interconnection-wide procedures are implemented to curtail Interchange Transactions that cross an Interconnection boundary, each Reliability Coordinator shall comply with the provisions of the Interconnection-wide procedure.	MEDIUM	HIGH

c. Changes to Violation Severity Levels for FAC-010-2, FAC-011-2, and FAC-014-2 — Approve

Action

Approve modifications to violation severity pertaining to the requirements in the approved FAC-010-2, FAC-011-2, and FAC-014-2 reliability standards as directed by FERC in Order No. 722. Direct staff to file the modified violation severity levels (VSLs) with FERC and applicable governmental authorities in Canada.

Background

On March 20, 2009, FERC issued Order No. 722 approving Version 2 of FAC-010, FAC-011, and FAC-014 to become mandatory and enforceable in the United States. In the Order, FERC did not accept NERC’s approach to apply VSLs only to the main requirement level on the basis that a VSL needed to be assigned to each requirement assigned a VRF, including all subrequirements. NERC contended it included all subrequirements in the violation severity language of the main requirement, using a “roll-up” approach. FERC did not dismiss this approach but indicated NERC could submit a more comprehensive filing discussing how it would employ the “roll-up” approach to all existing and prospective standards. However, in the interim, FERC directed NERC to modify its VSLs for several requirements and subrequirements as directed in the Order and file with FERC by May 28, 2009. Accordingly, NERC proposes the board approve the directed modifications to the VSL assignments for the requirements in FAC-010-2, FAC-011-2, and FAC-014-2 consistent with and in compliance with the directives in FERC Order No. 722 and as included in the attached file (**Attachment 1**).

Note that upon review of the directed modifications to the VSLs, on April 20, 2009, NERC filed a request for clarification regarding several of the assignments to better understand how they comport with FERC’s previously articulated VSL guidelines.

d. Errata — Information Only

Action

None

Background

In accordance with the SC's approved procedure for [Approving Errata in an Approved Reliability Standard](#), errata changes to four NERC Reliability Standards were posted for industry review without substantive issues identified and subsequently approved by the SC at its April 15–16, 2009 meeting. The affected standards and the errata changes are as follows:

IRO-006-4 — Reliability Coordination — Transmission Loading Relief (TLR)

Requirement R1.2. references the wrong document as shown below:

- R1.2.** The Interconnection-wide transmission loading relief procedure for use in the Western Interconnection is the WECC Unscheduled Flow Reduction Procedure provided at:
http://www.wecc.biz/documents/library/UFAS/UFAS_mitigation_plan_rev_2001-clean_8-8-03.pdf.
WECC-IRO-STD-006-0 provided at:
ftp://www.nerc.com/pub/sys/all_updl/standards/rrs/IRO-STD-006-0-17Jan07.pdf.

MOD-021-0 — Documentation of the Accounting Methodology for the Effects of Controllable Demand-Side Management in Demand and Energy Forecasts

Requirement R1. is missing a comma after the term, “Load-serving Entity” as shown below:

- R1.:** The Load-Serving Entity, Transmission Planner and Resource Planner's forecasts shall each clearly document how the Demand and energy effects of DSM programs (such as conservation, time-of-use rates, interruptible Demands, and Direct Control Load Management) are addressed."

PER-001-0 — Operating Personnel Responsibility and Authority

Measure M1.1. uses the word, “position” rather than the word, “job” as shown below:

- M1.1.:** A written current job description that states in clear and unambiguous language the responsibilities and authorities of each operating position of a Transmission Operator and Balancing Authority. The ~~position~~ job description identifies personnel subject to the authority of the Transmission Operator and Balancing Authority.

TPL-006-0 — Data From the Regional Reliability Organization Needed to Assess Reliability

The standard has one requirement and one measure. The existing measure is numbered, “M2.” and should be identified as “M1.” as shown below:

- ~~M2.~~ **M1.** The Regional Reliability Organization shall provide evidence to its Compliance Monitor that it provided Regional system data, reports, and system performance information per Reliability Standard TPL-006-0_R1.

As endorsed by the board at its February 2009 meeting, any errata changes that are processed using the approved errata procedure and approved by the SC will be *de facto* adopted by the board. Therefore, the errata changes to the four NERC standards identified above are considered

board adopted and will be filed with appropriate regulatory authorities in the United States and Canada.

e. Status of Standards Development — Information Only

Regulatory Status

In the United States, NERC has received approval for 94 continent-wide reliability standards and 8 WECC Regional Standards. An additional 24 standards (“fill-in-the-blank”) are still held as pending further information per Order No. 693.

In March 2009, FERC approved the following revised standards:

- IRO-006-4 — Reliability Coordination — Transmission Loading Relief; and
- Version 2 Facilities Design, Connections and Maintenance Reliability Standards (FAC-010-2, FAC-011-2, FAC-014-2).

In addition, FERC issued standards-related orders or NOPRs as follows in February and March 2009:

- NOPR to approve Available Transfer Capability Standards,
- Mandatory Reliability Standards for Critical Infrastructure Protection (regarding Nuclear Power Plants), and
- 31 Commission Directed Modifications to Violation Risk Factors for Critical Infrastructure Protection standards.

Also since the last board meeting, the following standards regulatory filings have been made:

- 2009–2011 Reliability Standards Development Plan,
- Errata Filing to the July 2008, PRC-023-1 — Transmission Relay Loadability Filing,
- Filing of 15 Standards Containing Errata,
- Petition for Approval of Six WECC Regional Entity Standards (BAL-002-WECC-1, FAC-501-WECC-1, PRC-004-WECC-1, TOP-007-WECC-1, VAR-002-WECC-1, VAR-501-WECC-1),
- TOP-004-2 Violation Severity Levels,
- Formal Interpretation to TOP-002-2,
- Formal Interpretation to VAR-002-1a,
- Supplement Bulk Electric System Filing for WECC and RFC,
- MOD-030-2 — Flowgate Methodology, and
- BAL-004-1 — Time Error Correction.

Standards Under Development

Key standards under development are:

- Project 2006-02 — Assess Transmission Future Needs and Develop Transmission Plans: The second posting of the proposed standards concluded in late September 2008. The team is contemplating a third posting in May or June with an overall project completion date in early 2010.
- Project 2006-03 — System Restoration and Blackstart: The team completed its drafting and presented the modified standards for ballot. The initial ballot commenced on April 14, 2009. Completion is expected in late second quarter of 2009.
- Project 2006-04 — Backup Facilities: The drafting team posted its third draft for comment through April 15, 2009. The team is set to review the comments and respond to these comments once collected. The team anticipates proceeding to ballot after this comment period with balloting expected in late second or early third quarter, 2009.

ORDER 722 – COMMISSION DIRECTED CHANGES TO VIOLATION SEVERITY LEVELS

Text of Requirement	Lower	Moderate	High	Severe
<p>FAC-010-2 R1. The Planning Authority shall have a documented SOL Methodology for use in developing SOLs within its Planning Authority Area. This SOL Methodology shall:</p>	<p>Not applicable.</p>	<p>The Planning Authority has a documented SOL Methodology for use in developing SOLs within its Planning Authority Area, but it does not address R1.2</p>	<p>The Planning Authority has a documented SOL Methodology for use in developing SOLs within its Planning Authority Area, but it does not address R1.3.</p>	<p>The Planning Authority has a documented SOL Methodology for use in developing SOLs within its Planning Authority Area, but it does not address R1.1. OR The Planning Authority has no documented SOL Methodology for use in developing SOLs within its Planning Authority Area.</p>
<p>FAC-010-2 R1.1. Be applicable for developing SOLs used in the planning horizon.</p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Planning Authority SOL methodology is not applicable for developing SOL in the planning horizon.</u></p>
<p>FAC-010-2 R1.2. State that SOLs shall not exceed associated Facility Ratings.</p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Planning Authority SOL Methodology did not state that SOLs shall not exceed associated Facility Ratings</u></p>
<p>FAC-010-2 R1.3. Include a description of how to identify the subset of SOLs that qualify as IROLs.</p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Planning Authority SOL Methodology did not include a description of how to identify the subset of SOLs that qualify as IROLs.</u></p>
<p>FAC-010-2 R2. The Planning Authority's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:</p>	<p>The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance following single and multiple contingencies, but does not address the pre-contingency state (R2.1)</p>	<p>The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state and following single contingencies, but does not address multiple contingencies. (R2.5-R2.6)</p>	<p>The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state and following multiple contingencies, but does not meet the performance for response to single contingencies. (R2.2-R2.4)</p>	<p>The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state but does not require that SOLs be set to meet the BES performance specified for response to single contingencies (R2.2-R2.4) and does not require that SOLs be set to meet the BES performance specified for response to multiple contingencies. (R2.5-R2.6)</p>

COMMISSION-DIRECTED VIOLATION SEVERITY LEVEL CHANGES – ORDER 722 FAC-010-2, FAC-011-2, FAC-014-2

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R2.1. In the pre-contingency state and with all Facilities in service, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect expected system conditions and shall reflect changes to system topology such as Facility outages.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Planning Authority's methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.1.</u>
FAC-010-2 R2.2. Following the single Contingencies identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading or uncontrolled separation shall not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Planning Authority's methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.2.</u>
FAC-010-2 R2.2.1. Single line to ground or three-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address single line to ground or 3-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.</u>
FAC-010-2 R2.2.2. Loss of any generator, line, transformer, or shunt device without a Fault.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address the loss of any generator, line, transformer, or shunt device without a Fault.</u>
FAC-010-2 R2.2.3. Single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.</u>
FAC-010-2 R2.3. Starting with all Facilities in service, the system's	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include one or more of the following: 2.3.1. through 2.3.3.</u>

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FAC-010-2, FAC-011-2, FAC-014-2

Text of Requirement	Lower	Moderate	High	Severe
response to a single Contingency, may include any of the following:				
FAC-010-2 R2.3.1. Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL Methodology does not provide that starting with all Facilities in service, the system's response to a single Contingency may include planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.</u>
FAC-010-2 R2.3.2. System reconfiguration through manual or automatic control or protection actions.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL Methodology does not provide that starting with all Facilities in service, the system's response to a single Contingency may include System reconfiguration through manual or automatic control or protection actions.</u>
FAC-010-2 R2.4. To prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL Methodology does not provide that in order to prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.</u>
FAC-010-2 R2.5. Starting with all Facilities in service and following any of the multiple Contingencies identified in Reliability Standard TPL-003 the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading or uncontrolled separation shall not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.5.</u>
FAC-010-2 R2.6. In determining the system's response to any of the multiple Contingencies, identified in Reliability Standard TPL-003, in addition to the actions identified in R2.3.1 and R2.3.2, the following	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>

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Text of Requirement	Lower	Moderate	High	Severe
shall be acceptable:				
FAC-010-2 R2.6.1. Planned or controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power Transfers.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL Methodology does not provide that in determining the system's response to any of the multiple Contingencies, identified in Reliability Standard TPL-003, in addition to the actions identified in R2.3.1 and R2.3.2, Planned or controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power Transfers shall be acceptable.</u>
FAC-010-2 R3. The Planning Authority's methodology for determining SOLs, shall include, as a minimum, a description of the following, along with any reliability margins applied for each:	The Planning Authority has a methodology for determining SOLs that includes a description for all but one of the following: R3.1 through R3.6.	The Planning Authority has a methodology for determining SOLs that includes a description for all but two of the following: R3.1 through R3.6.	The Planning Authority has a methodology for determining SOLs that includes a description for all but three of the following: R3.1 through R3.6.	The Planning Authority has a methodology for determining SOLs that is missing a description of four or more of the following: R3.1 through R3.6.
FAC-010-2 R3.1. Study model (must include at least the entire Planning Authority Area as well as the critical modeling details from other Planning Authority Areas that would impact the Facility or Facilities under study).	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include a study model that includes the entire Planning Authority Area, and the critical modeling details of other Planning Authority Areas that would impact the facility or facilities under study.</u>
FAC-010-2 R3.2. Selection of applicable Contingencies.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include the selection of applicable Contingencies.</u>
FAC-010-2 R3.3. Level of detail of system models used to determine SOLs.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not describe the level of detail of system models used to determine SOLs.</u>

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FAC-010-2, FAC-011-2, FAC-014-2

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R3.4. Allowed uses of Special Protection Systems or Remedial Action Plans.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not describe the allowed uses of Special Protection Systems or Remedial Action Plans.</u>
FAC-010-2 R3.5. Anticipated transmission system configuration, generation dispatch and Load level.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include the description of anticipated transmission system configuration, generation dispatch and Load level.</u>
FAC-010-2 R3.6. Criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL T _v .	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include a description of the criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL T_v.</u>
FAC-010-2 R4. The Planning Authority shall issue its SOL Methodology, and any change to that methodology, to all of the following prior to the effectiveness of the change:	<p>One or both of the following: The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities.</p> <p>For a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.</p>	<p>One of the following: The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Planning Authority issued its SOL</p>	<p>One of the following: The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in</p>	<p>One of the following: The Planning Authority failed to issue its SOL Methodology and changes to that methodology to more than three of the required entities. The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 90 calendar days or more after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the</p>

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Text of Requirement	Lower	Moderate	High	Severe
		Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	effectiveness of the change. The Planning Authority issued its SOL Methodology and changes to that methodology to all but four of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.
FAC-010-2 R4.1. Each adjacent Planning Authority and each Planning Authority that indicated it has a reliability-related need for the methodology.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Planning Authority did not issue its SOL Methodology and any change to that methodology, prior to the effectiveness of the change, to each adjacent Planning Authority and each Planning Authority that indicated it has a reliability-related need for the methodology.</u>
FAC-010-2 R4.2. Each Reliability Coordinator and Transmission Operator that operates any portion of the Planning Authority’s Planning Authority Area.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Planning Authority did not issue its SOL Methodology and any change to that methodology, prior to the effectiveness of the change, to each Reliability Coordinator and Transmission Operator that operates any portion of the Planning Authority’s Planning Authority Area.</u>

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Text of Requirement	Lower	Moderate	High	Severe
<p>FAC-010-2 R4.3. Each Transmission Planner that works in the Planning Authority’s Planning Authority Area.</p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>The Planning Authority did not issue its SOL Methodology and any change to that methodology, prior to the effectiveness of the change, to each Transmission Planner that works in the Planning Authority’s Planning Authority Area prior to the effectiveness of the change.</u></p>
<p>FAC-010-2 R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Planning Authority shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.</p>	<p>The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was longer than 45 calendar days but less than 60 calendar days.</p>	<p>The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 60 calendar days or longer but less than 75 calendar days.</p>	<p>The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 75 calendar days or longer but less than 90 calendar days. OR The Planning Authority’s response to documented technical comments on its SOL Methodology indicated that a change will not be made, but did not include an explanation of why the change will not be made.</p>	<p>The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 90 calendar days or longer. OR The Planning Authority’s response to documented technical comments on its SOL Methodology did not indicate whether a change will be made to the SOL Methodology.</p>

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Text of Requirement	<u>Not applicable.</u> Lower	<u>Not applicable.</u> Moderate	<u>Not applicable.</u> High	<u>Not applicable.</u> Severe
WECC -- FAC-010-2 R1. The following interconnection wide Regional Difference shall be applicable in the Western Interconnection:				
WECC -- FAC-010-2 R1.1. As governed by the requirements of R2.4 and R2.5, starting with all Facilities in service, shall require the evaluation of the following multiple Facility Contingencies when establishing SOLs:	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology fails to address any of the evaluations listed in 1.1.1 through 1.1.7</u>
WECC -- FAC-010-2 R1.1.1. Simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing. If multiple circuit towers are used only for station entrance and exit purposes, and if they do not exceed five towers at each station, then this condition is an acceptable risk and therefore can be excluded.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following were excluded when establishing SOLs; simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing.</u>
WECC -- FAC-010-2 R1.1.2. A permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following were excluded when establishing SOLs; a permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7</u>
WECC -- FAC-010-2 R1.1.3. Simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs; simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.</u>

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Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-010-2 R1.1.4. The failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs; the failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.</u>
WECC -- FAC-010-2 R1.1.5. A non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs; a non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.</u>
WECC -- FAC-010-2 R1.1.6. A common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs; a common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.</u>
WECC -- FAC-010-2 R1.1.7. The loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs; the loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.</u>
WECC -- FAC-010-2 R1.2. SOLs shall be established such that for multiple Facility Contingencies in E1.1.1 through E1.1.5 operation within the SOL shall provide system performance consistent with the following:	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology fails to address any of the evaluations listed in 1.2.1 through 1.2.7</u>
WECC -- FAC-010-2 R1.2.1. All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.</u>

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Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-010-2 R1.2.2. Cascading does not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: cascading does not occur.</u>
WECC -- FAC-010-2 R1.2.3. Uncontrolled separation of the system does not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: uncontrolled separation of the system does not occur.</u>
WECC -- FAC-010-2 R1.2.4. The system demonstrates transient, dynamic and voltage stability.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: the system demonstrates transient, dynamic and voltage stability.</u>
WECC -- FAC-010-2 R1.2.5. Depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.</u>
WECC -- FAC-010-2 R1.2.6. Interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.</u>
WECC -- FAC-010-2 R1.2.7. To prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: to prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.</u>
WECC -- FAC-010-2 R1.3. SOLs shall be established such that for multiple Facility Contingencies in E1.1.6 through E1.1.7 operation within the SOL shall provide system performance consistent with the following with respect to impacts on	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology fails to address any of the evaluations listed in 1.3.1</u>

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Text of Requirement	Lower	Moderate	High	Severe
other systems:				
WECC -- FAC-010-2 R1.3.1. Cascading does not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL methodology fails to address: cascading does not occur.</u>
WECC -- FAC-010-2 R1.4. The Western Interconnection may make changes (performance category adjustments) to the Contingencies required to be studied and/or the required responses to Contingencies for specific facilities based on actual system performance and robust design. Such changes will apply in determining SOLs.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>

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Text of Requirement	Lower	Moderate	High	Severe
FAC-011-2 R1. The Reliability Coordinator shall have a documented methodology for use in developing SOLs (SOL Methodology) within its Reliability Coordinator Area. This SOL Methodology shall:	Not applicable.	The Reliability Coordinator has a documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area, but it does not address R1.2	The Reliability Coordinator has a documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area, but it does not address R1.3.	The Reliability Coordinator has a documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area, but it does not address R1.1. OR The Reliability Coordinator has no documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area.
FAC-011-2 R1.1. Be applicable for developing SOLs used in the operations horizon.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Reliability Coordinator's SOL methodology is not applicable for developing SOL in the operations horizon.</u>
FAC-011-2 R1.2. State that SOLs shall not exceed associated Facility Ratings.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Reliability Coordinator's SOL Methodology did not state that SOLs shall not exceed associated Facility Ratings</u>
FAC-011-2 R1.3. Include a description of how to identify the subset of SOLs that qualify as IROLs	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Reliability Coordinator's SOL Methodology did not include a description of how to identify the subset of SOLs that qualify as IROLs.</u>
FAC-011-2 R2. The Reliability Coordinator's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:	The Reliability Coordinator's SOL Methodology requires that SOLs are set to meet BES performance following single contingencies, but does not require that SOLs are set to meet BES performance in the pre-contingency state. (R2.1)	Not applicable.	The Reliability Coordinator's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state and following multiple contingencies, but does not meet the performance for response to single contingencies. (R2.2 –R2.4)	The Reliability Coordinator's SOL Methodology does not require that SOLs are set to meet BES performance in either the pre-contingency state and does not require that SOLs are set to meet BES performance following single contingencies. (R2.1 through R2.4)

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Text of Requirement	Lower	Moderate	High	Severe
FAC-011-2 R2.1. In the pre-contingency state, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect current or expected system conditions and shall reflect changes to system topology such as Facility outages.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.1.</u>
FAC-011-2 R2.2. Following the single Contingencies ¹ identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading or uncontrolled separation shall not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.2.</u>
FAC-011-2 R2.2.1. Single line to ground or 3-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not require that SOLs provide BES performance consistent with: single line to ground or 3-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.</u>
FAC-011-2 R2.2.2. Loss of any generator, line, transformer, or shunt device without a Fault.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address the loss of any generator, line, transformer, or shunt device without a Fault.</u>
FAC-011-2 R2.2.3. Single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.</u>

COMMISSION-DIRECTED VIOLATION SEVERITY LEVEL CHANGES – ORDER 722 FAC-010-2, FAC-011-2, FAC-014-2

Text of Requirement	Lower	Moderate	High	Severe
FAC-011-2 R2.3. In determining the system's response to a single Contingency, the following shall be acceptable:	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include one or more of the following 2.3.1. through 2.3.3.</u>
FAC-011-2 R2.3.1. Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address that, in determining the systems response to a single contingency, Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area is acceptable.</u>
FAC-011-2 R2.3.2. Interruption of other network customers, (a) only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or (b) if the real-time operating conditions are more adverse than anticipated in the corresponding studies	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address that, in determining the systems response to a single contingency, Interruption of other network customers is acceptable, (a) only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or (b) if the real-time operating conditions are more adverse than anticipated in the corresponding studies.</u>
FAC-011-2 R2.3.3. System reconfiguration through manual or automatic control or protection actions.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not address that, in determining the systems response to a single contingency, system reconfiguration through manual or automatic control or protection actions is acceptable.</u>
FAC-011-2 R2.4. To prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not provide that to prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.</u>
FAC-011-2 R3. The Reliability Coordinator's methodology for determining SOLs, shall include, as a minimum, a description of the following, along with any reliability	The Reliability Coordinator has a methodology for determining SOLs that includes a	The Reliability Coordinator has a methodology for determining SOLs that includes a	The Reliability Coordinator has a methodology for determining SOLs that includes a	The Reliability Coordinator has a methodology for determining SOLs that is missing a description of three <u>four</u> or more of the following: R3.1 through R3.7.

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Text of Requirement	Lower	Moderate	High	Severe
margins applied for each:	description for all but one of the following: R3.1 through R3.7.	description for all but two of the following: R3.1 through R3.7.	description for all but three of the following: R3.1 through R3.7.	
FAC-011-2 R3.1. Study model (must include at least the entire Reliability Coordinator Area as well as the critical modeling details from other Reliability Coordinator Areas that would impact the Facility or Facilities under study.)	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include a description of the study model to be used which must include the entire Reliability Coordinator area, and the critical details of other Reliability Coordinator areas that would impact the facility or facilities under study</u>
FAC-011-2 R3.2. Selection of applicable Contingencies	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include the selection of applicable Contingencies.</u>
FAC-011-2 R3.3. A process for determining which of the stability limits associated with the list of multiple contingencies (provided by the Planning Authority in accordance with FAC-014 Requirement 6) are applicable for use in the operating horizon given the actual or expected system conditions.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not include a description of a process for determining which of the stability limits associated with the list of multiple contingencies (provided by the Planning Authority in accordance with FAC-014 Requirement 6) are applicable for use in the operating horizon given the actual or expected system conditions.</u>
FAC-011-2 R3.3.1. This process shall address the need to modify these limits, to modify the list of limits, and to modify the list of associated multiple contingencies.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology for determining SOL's does not address the need to modify the limits described in R3.3, the list of limits, or the list of associated multiple contingencies.</u>
FAC-011-2 R3.4. Level of detail of system models used to determine SOLs.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Methodology does not describe the level of detail of system models used to determine SOLs.</u>
FAC-011-2 R3.5. Allowed uses of Special Protection Systems or Remedial Action Plans.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not describe the allowed uses of Special Protection Systems or Remedial Action Plans.</u>
FAC-011-2 R3.6. Anticipated transmission system configuration, generation dispatch and Load level	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology does not describe the anticipated transmission system configuration, generation dispatch and Load level.</u>

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Text of Requirement	Lower	Moderate	High	Severe
<p>FAC-011-2 R3.7. Criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL T_v.</p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>The methodology does not describe criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit and criteria for developing any associated IROL T_v.</u></p>
<p>FAC-011-2 R4. The Reliability Coordinator shall issue its SOL Methodology and any changes to that methodology, prior to the effectiveness of the Methodology or of a change to the Methodology, to all of the following:</p>	<p>One or both of the following : The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but one of the required entities. For a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.</p>	<p>One of the two following : The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology,</p>	<p>One of the following : The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but</p>	<p>One of the following: The Reliability Coordinator failed to issue its SOL Methodology and changes to that methodology to more than three of the required entities. The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 90 calendar days or more after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but four of the required entities AND for a change in methodology, the changed</p>

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Text of Requirement	Lower	Moderate	High	Severe
		the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	less than 60 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	methodology was provided up to 30 calendar days after the effectiveness of the change
FAC-011-2 R4.1. Each adjacent Reliability Coordinator and each Reliability Coordinator that indicated it has a reliability-related need for the methodology.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Reliability Coordinator did not issue its SOL Methodology or any changes to that methodology to each adjacent Reliability Coordinator and each Reliability Coordinator that indicated it has a reliability-related need for the methodology.</u>
FAC-011-2 R4.2. Each Planning Authority and Transmission Planner that models any portion of the Reliability Coordinator’s Reliability Coordinator Area.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Reliability Coordinator did not issue its SOL Methodology or any changes to that methodology to each Planning Authority or Transmission Planner that models any portion of the Reliability Coordinator’s Reliability Coordinator Area.</u>
FAC-011-2 R4.3. Each Transmission Operator that operates in the Reliability Coordinator Area.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Reliability Coordinator did not issue its SOL Methodology or any changes to that methodology to each Transmission Operator that operates in the Reliability Coordinator Area.</u>

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Text of Requirement	Lower	Moderate	High	Severe
<p>FAC-011-2 R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Reliability Coordinator shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.</p>	<p>The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was longer than 45 calendar days but less than 60 calendar days.</p>	<p>The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 60 calendar days or longer but less than 75 calendar days.</p>	<p>The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 75 calendar days or longer but less than 90 calendar days. OR The Reliability Coordinator's response to documented technical comments on its SOL Methodology indicated that a change will not be made, but did not include an explanation of why the change will not be made.</p>	<p>The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 90 calendar days or longer. OR The Reliability Coordinator's response to documented technical comments on its SOL Methodology did not indicate whether a change will be made to the SOL Methodology.</p>

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FAC-010-2, FAC-011-2, FAC-014-2**

WECC Requirement	<u>Not applicable.</u>	<u>Moderate.</u>	<u>High.</u>	<u>Severe.</u>
WECC -- FAC-011-2 R1.1. The following interconnection-wide Regional Difference shall be applicable in the Western Interconnection:				
WECC -- FAC-011-2 R1.1. As governed by the requirements of R2.4 and R2.5, starting with all Facilities in service, shall require the evaluation of the following multiple Facility Contingencies when establishing SOLs:	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology fails to address any of the evaluations listed in 1.1.1 through 1.1.7</u>
WECC -- FAC-011-2 R1.1.1. Simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing. If multiple circuit towers are used only for station entrance and exit purposes, and if they do not exceed five towers at each station, then this condition is an acceptable risk and therefore can be excluded.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following were excluded when establishing SOLs: simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing.</u>
WECC -- FAC-011-2 R1.1.2. A permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following were excluded when establishing SOLs: a permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7</u>
WECC -- FAC-011-2 R1.1.3. Simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs: simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.</u>

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Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-011-2 R1.1.4. The failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs: the failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.</u>
WECC -- FAC-011-2 R1.1.5. A non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs: a non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.</u>
WECC -- FAC-011-2 R1.1.6. A common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs; a common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.</u>
WECC -- FAC-011-2 R1.1.7. The loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The following was excluded when establishing SOLs: the loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.</u>
WECC -- FAC-011-2 R1.2. SOLs shall be established such that for multiple Facility Contingencies in E1.1.1 through E1.1.5 operation within the SOL shall provide system performance consistent with the following:	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology fails to address any of the evaluations listed in 1.2.1 through 1.2.7</u>
WECC -- FAC-011-2 R1.2.1. All Facilities are operating within their applicable Post-Contingency	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: All Facilities are operating within their applicable Post-Contingency</u>

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Text of Requirement	Lower	Moderate	High	Severe
thermal, frequency and voltage limits.				<u>thermal, frequency and voltage limits.</u>
WECC -- FAC-011-2 R1.2.2. Cascading does not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: cascading does not occur.</u>
WECC -- FAC-011-2 R1.2.3. Uncontrolled separation of the system does not occur.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: uncontrolled separation of the system does not occur.</u>
WECC -- FAC-011-2 R1.2.4. The system demonstrates transient, dynamic and voltage stability.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: the system demonstrates transient, dynamic and voltage stability.</u>
WECC -- FAC-011-2 R1.2.5. Depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.</u>
WECC -- FAC-011-2 R1.2.6. Interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.</u>
WECC -- FAC-011-2 R1.2.7. To prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>SOLs do not provide system performance consistent with: to prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.</u>

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Text of Requirement	Lower	Moderate	High	Severe
<p>WECC -- FAC-011-2 R1.3. SOLs shall be established such that for multiple Facility Contingencies in E1.1.6 through E1.1.7 operation within the SOL shall provide system performance consistent with the following with respect to impacts on other systems:</p>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The methodology fails to address any of the evaluations listed in 1.3.1</u>
<p>WECC -- FAC-011-2 R1.3.1. Cascading does not occur.</p>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The SOL methodology fails to address: cascading does not occur.</u>
<p>WECC -- FAC-011-2 R1.4. The Western Interconnection may make changes (performance category adjustments) to the Contingencies required to be studied and/or the required responses to Contingencies for specific facilities based on actual system performance and robust design. Such changes will apply in determining SOLs.</p>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>

**COMMISSION-DIRECTED VIOLATION SEVERITY LEVEL CHANGES – ORDER 722
FAC-010-2, FAC-011-2, FAC-014-2**

Text of Requirement	Lower	Moderate	High	Severe
<p>FAC-014-2 R1. The Reliability Coordinator shall ensure that SOLs, including Interconnection Reliability Operating Limits (IROLs), for its Reliability Coordinator Area are established and that the SOLs (including Interconnection Reliability Operating Limits) are consistent with its SOL Methodology.</p>	<p>There are SOLs, for the Reliability Coordinator Area, but from 1% up to but less than 25% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)</p>	<p>There are SOLs, for the Reliability Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)</p>	<p>There are SOLs, for the Reliability Coordinator Area, but 50% or more, but less than 75% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)</p>	<p>There are SOLs for the Reliability Coordinator Area, but one or more of these the SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)</p>
<p>FAC-014-2 R2. The Transmission Operator shall establish SOLs (as directed by its Reliability Coordinator) for its portion of the Reliability Coordinator Area that are consistent with its Reliability Coordinator's SOL Methodology.</p>	<p>The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but from 1% up to but less than 25% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)</p>	<p>The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)</p>	<p>The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but 50% or more, but less than 75% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)</p>	<p>The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but 75% or more of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)</p>
<p>FAC-014-2 R3. The Planning Authority shall establish SOLs, including IROLs, for its Planning Authority Area that are consistent with its SOL Methodology</p>	<p>There are SOLs, for the Planning Coordinator Area, but from 1% up to, but less than, 25% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)</p>	<p>There are SOLs, for the Planning Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)</p>	<p>There are Sols for the Planning Coordinator Area, but 10% or more, but less than 75% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)</p>	<p>There are SOLs, for the Planning Coordinator Area, but 75% or more of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)</p>

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Text of Requirement	Lower	Moderate	High	Severe
<p>FAC-014-2 R4. The Transmission Planner shall establish SOLs, including IROLs, for its Transmission Planning Area that are consistent with its Planning Authority’s SOL Methodology.</p>	<p>The Transmission Planner has established SOLs for its portion of the Planning Coordinator Area, but up to 25% of these SOLs are inconsistent with the Planning Coordinator’s SOL Methodology. (R4)</p>	<p>The Transmission Planner has established SOLs for its portion of the Planning Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Planning Coordinator’s SOL Methodology. (R4)</p>	<p>The Transmission Planner has established SOLs for its portion of the Reliability Coordinator Area, but 50% or more, but less than 75% of these SOLs are inconsistent with the Planning Coordinator’s SOL Methodology. (R4)</p>	<p>The Transmission Planner has established SOLs for its portion of the Planning Coordinator Area, but one or more of these SOLs are inconsistent with the Planning Coordinator’s SOL Methodology. (R4)</p>
<p>FAC-014-2 R5. The Reliability Coordinator, Planning Authority and Transmission Planner shall each provide its SOLs and IROLs to those entities that have a reliability-related need for those limits and provide a written request that includes a schedule for delivery of those limits as follows:</p>	<p>The responsible entity provided its SOLs to all the requesting entities but missed meeting one or more of the schedules by less than 15 calendar days. (R5)</p>	<p>One of the following: The responsible entity provided its SOLs to all but one of the requesting entities within the schedules provided. (R5) Or The responsible entity provided its SOLs to all the requesting entities but missed meeting one or more of the schedules for 15 or more but less than 30 calendar days. (R5) OR The supporting information provided with the</p>	<p>One of the following: The responsible entity provided its SOLs to all but two of the requesting entities within the schedules provided. (R5) Or The responsible entity provided its SOLs to all the requesting entities but missed meeting one or more of the schedules for 30 or more but less than 45 calendar days. (R5) OR The supporting information provided with the IROLs does not address 5.1.3</p>	<p>One of the following: The responsible entity failed to provide its SOLs to more than two of the requesting entities within 45 calendar days of the associated schedules. (R5) OR The supporting information provided with the IROLs does not address 5.1.1 and 5.1.2.</p>

COMMISSION-DIRECTED VIOLATION SEVERITY LEVEL CHANGES – ORDER 722

FAC-010-2, FAC-011-2, FAC-014-2

Text of Requirement	Lower	Moderate	High	Severe
		IROLs does not address 5.1.4		
FAC-014-2 R5.1. The Reliability Coordinator shall provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Reliability Coordinators and Reliability Coordinators who indicate a reliability-related need for those limits, and to the Transmission Operators, Transmission Planners, Transmission Service Providers and Planning Authorities within its Reliability Coordinator Area. For each IROL, the Reliability Coordinator shall provide the following supporting information:	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Reliability Coordinator did not provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Reliability Coordinators and Reliability Coordinators who indicate a reliability-related need for those limits, and to the Transmission Operators, Transmission Planners, Transmission Service Providers and Planning Authorities within its Reliability Coordinator Area.</u>
FAC-014-2 R5.1.1. Identification and status of the associated Facility (or group of Facilities) that is (are) critical to the derivation of the IROL.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>For any IROL, the Reliability Coordinator did not provide the Identification and status of the associated Facility (or group of Facilities) that is (are) critical to the derivation of the IROL.</u>
FAC-014-2 R5.1.2. The value of the IROL and its associated Tv.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>For any IROL, the Reliability Coordinator did not provide the value of the IROL and its associated Tv.</u>
FAC-014-2 R5.1.3. The associated Contingency(ies).	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>For any IROL, the Reliability Coordinator did not provide the associated Contingency(ies).</u>
FAC-014-2 R5.1.4. The type of limitation represented by the IROL (e.g., voltage collapse, angular stability).	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>For any IROL, the Reliability Coordinator did not provide the type of limitation represented by the IROL (e.g., voltage collapse, angular stability).</u>
FAC-014-2 R5.2. The Transmission Operator shall provide any SOLs it developed to its Reliability Coordinator and to the Transmission Service Providers that share its portion of the Reliability Coordinator Area.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Transmission Operator did not provide the complete set of SOLs it developed to its Reliability Coordinator and to the Transmission Service Providers that share its portion of the Reliability Coordinator Area.</u>

COMMISSION-DIRECTED VIOLATION SEVERITY LEVEL CHANGES – ORDER 722

FAC-010-2, FAC-011-2, FAC-014-2

Text of Requirement	Lower	Moderate	High	Severe
FAC-014-2 R5.3. The Planning Authority shall provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Planning Authorities, and to Transmission Planners, Transmission Service Providers, Transmission Operators and Reliability Coordinators that work within its Planning Authority Area.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Planning Authority did not provide its complete set of SOLs (including the subset of SOLs that are IROLs) to adjacent Planning Authorities, and to Transmission Planners, Transmission Service Providers, Transmission Operators and Reliability Coordinators that work within its Planning Authority Area.</u>
FAC-014-2 R5.4. The Transmission Planner shall provide its SOLs (including the subset of SOLs that are IROLs) to its Planning Authority, Reliability Coordinators, Transmission Operators, and Transmission Service Providers that work within its Transmission Planning Area and to adjacent Transmission Planners.	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>Not applicable.</u>	<u>The Transmission Planner did not provide its complete set of SOLs (including the subset of SOLs that are IROLs) to its Planning Authority, Reliability Coordinators, Transmission Operators, and Transmission Service Providers that work within its Transmission Planning Area and to adjacent Transmission Planners.</u>
FAC-014-2 R6. The Planning Authority shall identify the subset of multiple contingencies (if any), from Reliability Standard TPL-003 which result in stability limits.	The Planning Authority failed to notify the Reliability Coordinator in accordance with R6.2 <u>Not applicable.</u>	Not applicable.	The Planning Authority identified the subset of multiple contingencies which result in stability limits but did not provide the list of multiple contingencies and associated limits to one Reliability Coordinator that monitors the Facilities associated with these limits. (R6.1) <u>Not applicable.</u>	The Planning Authority did not identify the subset of multiple contingencies which result in stability limits. (R6) OR The Planning Authority identified the subset of multiple contingencies which result in stability limits but did not provide the list of multiple contingencies and associated limits to more than one Reliability Coordinator that monitors the Facilities associated with these limits. (R6.1)

**COMMISSION-DIRECTED VIOLATION SEVERITY LEVEL CHANGES – ORDER 722
FAC-010-2, FAC-011-2, FAC-014-2**

Text of Requirement	Lower	Moderate	High	Severe
<p>FAC-014-2 R6.1. The Planning Authority shall provide this list of multiple contingencies and the associated stability limits to the Reliability Coordinators that monitor the facilities associated with these contingencies and limits.</p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>The Planning Authority did not identify the subset of multiple contingencies, from TPL-003 that resulted in stability limits and provide the complete list of multiple contingencies and the associated stability limits to the Reliability Coordinators that monitor the facilities associated with these contingencies and limits.</u></p>
<p>FAC-014-2 R6.2. If the Planning Authority does not identify any stability-related multiple contingencies, the Planning Authority shall so notify the Reliability Coordinator.</p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>Not applicable.</u></p>	<p><u>The Planning Authority did not notify the Reliability Coordinator that it did not identify any stability-related multiple contingencies.</u></p>

Compliance Monitoring and Enforcement Program

Board Action Required

Approve Compliance and Certification Committee (CCC) program documents for the following areas and file items a., b., and c. with FERC for approval as part of NERC's Rules of Procedure:

- a. Compliance and Certification Committee Hearing Procedures — CCCPP-004-1
- b. Hearing Procedures for Use in Appeals of Certification Matters — CCCPP-005-1
- c. Compliance and Certification Committee Mediation Procedures — CCCPP-006-1
- d. Monitoring Program for NERC's Adherence to NERC's Rules of Procedure for Organization Registration and Certification Program — CCCPP-007-1
- e. Compliance and Certification Committee 2009 Work Plan

Background Information

The CCC is a board-appointed committee populated by industry stakeholders. The committee's mission is to provide an independent monitoring of NERC's compliance with the Rules of Procedure for NERC's Compliance Monitoring and Enforcement Program (CMEP) and NERC's Standard Development Process. In addition, the CCC is responsible for providing support and advice to the board regarding NERC's adherence to the Rules of Procedure and any applicable reliability standards.

a. Compliance and Certification Committee Hearing Procedures — CCCPP-004-1

CCCPP-004-1 addresses procedures to govern practices before the CCC in hearings, as described in the NERC Rules of Procedure, to (1) determine whether Registered Entities or Regional Entities have violated NERC Reliability Standards, and if so, to determine the appropriate Mitigation Plans and any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), or (2) hear a challenge by a Regional Entity regarding a regional compliance program audit finding. These procedures are consistent with the hearing procedures for enforcement matters adopted as part of the Uniform Compliance Monitoring and Enforcement Program.

b. Hearing Procedures For Use In Appeals of Certification Matters — CCCPP-005-1

CCCPP-005-1 addresses procedures to govern practices before the CCC in hearings conducted into appeals to resolve any disputes related to Certification activities, as described in Section 504 and Appendix 5 of the NERC Rules of Procedure. The procedures are based on a set of principles aimed at maintaining the integrity of the fact-finding process, ensuring that all parties to the hearings are treated fairly, protecting against undue influence by any person or group, basing decisions solely on the facts and arguments of record, providing consistency in hearing decisions, and expediting the hearing process.

c. Compliance and Certification Committee Mediation Procedures — CCCPP-006-1

CCCPP-006-1 defines an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity in resolving disagreements or disputes concerning NERC performance audits of a Regional Entity's compliance program. The parties to the mediation are not obligated to reach agreement and the process does not eliminate the parties using other

dispute resolution options available. If the parties do reach agreement, the agreement will be binding and enforceable. The mediation process is confidential, regardless of whether or not agreement is reached.

d. Monitoring Program for NERC's Adherence to NERC's Rules of Procedure for Organization Registration and Certification Program — CCCPP-007-1

CCCPP-007-1 defines procedures to implement independent audits of the NERC Organization Registration and Certification Program, as specified in NERC Rules of Procedure. The procedures include conducting an independent audit of the Organization Registration and Certification Program at least once every three years, or more frequently as determined by the NERC Board of Trustees Compliance Committee. Audits shall be conducted by independent expert auditors and any audits conducted pursuant to this procedure shall be conducted in accordance with the CCC Charter. This document describes the program and associated processes to be utilized by the CCC in carrying out this responsibility.

e. CCC 2009 Work Plan

The 2009 work plan identifies the anticipated activities of the CCC for 2009, based on the responsibilities assigned by the NERC Board of Trustees. The plan includes activities to assess NERC's adherence to the Reliability Standards Development Program, the Rules of Procedure applicable to the Organization Registration and Certification Program, and the reliability standards applicable to NERC. In addition, the committee plans to initiate a procedure for NERC to self-certify performance in these areas, reviews of the areas by the CCC, and an on-site audit of the Reliability Standards Development Program. Adverse findings investigations may be initiated by the CCC at the direction of the Board of Trustees, or based on events or complaints, and spot checks may be performed from time to time.

The plan also includes the CCC participating in each audit of a Regional Entity conducted by NERC and developing the criteria for conducting these audits. The committee is also planning to develop and perform surveys to collect information on stakeholder perceptions of the NERC Compliance, Registration and Certification Programs. The results of the CCC audits, assessments and surveys will be reported to the Board of Trustees throughout 2009.

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NERC Compliance and Certification Committee Hearing Procedures

CCC Monitoring Program — CCCPP-004-1

to ensure
the reliability of the
bulk power system

Version 1.0

NERC Compliance and Certification Committee		CCCPP-004-1
Title: Hearing Procedures		
Version: 1.0	Revision Date: n/a	Effective Date: _____, 2009

Summary

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings in the United States as described in the North America Electric Reliability Corporation (“NERC”) Rules of Procedure (“ROP”). Specifically, as directed by the NERC Board of Trustees, CCC serves as the hearing body for any contest regarding findings of or penalties or sanctions for violation(s) of reliability standard(s) where NERC is directly monitoring the entity for compliance with those standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Region itself where approved standards are applicable to the region) as described in the ROP Section 409.

Revision History

Date	Version Number	Comments
03/03/09	1.0	Approved by CCC

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1. Compliance and Certification Committee Hearing Procedures

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in the North America Electric Reliability Corporation (“NERC”) Rules of Procedure (“ROP”). Specifically, as directed by the NERC Board of Trustees, CCC serves as the hearing body for any contest regarding findings of or penalties or sanctions for violation(s) of reliability standard(s) where NERC is directly monitoring the entity for compliance with those standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Region itself where approved standards are applicable to the region) as described in the ROP Section 409.

CCC shall determine (i) whether such Registered Entities as described above or whether Regional Entities have violated Reliability Standards and if so, the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), or (ii) a challenge by a Regional Entity regarding a regional compliance program audit finding by NERC (in either case, such Respondent or Regional Entity, hereafter a “Respondent”). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter. The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Panel on any matter brought before it for decision.

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

1.1.2 Deviation

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

1.1.3 Standards for Discretion

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

- a) Integrity of the Fact-Finding Process — The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.

- b) Fairness — Persons appearing in CCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.
- c) Independence — The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- d) Balanced Decision-Making — Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the NERC's conflict of interest policy.
- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

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

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

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

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

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

“Director of Compliance” means the NERC Director of Compliance or his or her designee.

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

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

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means (1) a CCC member or (2) an individual employed or contracted by NERC, as designated by the CCC to preside over hearings conducted pursuant to these Hearing Procedures. The CCC shall approve the individual appointed as the Hearing Officer. The Hearing Officer will not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Paragraph 1.1.1 above. Specifically, the CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm’s length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

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

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

take into consideration any timely efforts made by the Respondent to remedy the violation.

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

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

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

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

“Staff” or “Compliance Staff” means individuals employed or contracted by NERC in its Compliance Monitoring and Enforcement Program who have the authority to make initial determinations of compliance or violation with Reliability Standards by Respondents and associated Penalties and Mitigation Plans.

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

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with the CCC must contain:

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

1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11

inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.

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

1.2.3 Submission of Documents

a) Where to File

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from 8 a.m. to 5 p.m., Eastern, each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Panel. Filings will be considered made when they are date stamped received by the NERC Director of Compliance. To be timely, filings must be received no later than 5 p.m., Eastern, on the date specified.

c) How to File

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

d) Number of Copies to File

One original and seven exact copies of any document shall be filed. The NERC Director of Compliance will provide the Hearing Officer, if any, and each member of the Hearing Panel with a copy of each filing.

e) Signature

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

f) Verification

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

g) Certificate of Service

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

1.2.4 Service

a) Service List

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

b) By Participants

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

c) By the NERC Director of Compliance

The NERC Director of Compliance shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage

prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Hearing Panel shall ensure that the NERC Director of Compliance has a copy of the record of a proceeding at the time it issues a final order.

d) Effective Date of Service

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

1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the NERC office is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the NERC office is closed.

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

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

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

1.2.9 Rulings, Notices, Orders and Other Issuances

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

1.2.10 Location of Hearings and Conferences

All hearings and oral arguments shall be held at NERC's principal office unless the Hearing Officer or the Hearing Panel designates a different location.

1.2.11 Participant Participation

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

1.2.12 Interventions Are Not Permitted

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings), no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

1.2.13 Proceedings Closed to the Public

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

1.2.14 Docketing System

The NERC Director of Compliance shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation or the findings of a regional compliance program audit. Unless NERC provides a different docketing system that will be used, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "NERC", followed by a dash ("-"), followed by

a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

1.2.15 Hold Harmless

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

1.3 Initiation of the Hearing Process

1.3.1 Respondent’s Option to Request a Hearing

Except when contesting a Remedial Action Directive pursuant to Paragraph 1.9 of these Hearing Procedures, a Respondent may file a statement with the NERC Director of Compliance requesting a hearing if either:

- a) The Respondent files (i) a response to a notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both, or (ii) a response that challenges a regional compliance program audit finding; or
- b) The Compliance Staff submits to the Respondent a statement rejecting the Respondent’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Respondent’s initial proposed Mitigation Plan.

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

A notice of Alleged Violation issued to a Respondent, a Staff statement setting forth its rejection of a Respondent’s proposed revised Mitigation Plan, or a report of the findings from a regional compliance program audit shall clearly state that the Respondent has the option to contest the Alleged Violation or proposed Penalty, or both, the regional compliance program audit finding, or the Compliance Staff’s rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Paragraphs 1.4 to 1.7. If the Respondent (or any Respondent if there are more than one Respondent) files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Paragraphs 1.4 to 1.7. If the Respondent (or all Respondents if there are more than one Respondent) requests the full hearing procedure, the full

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

A hearing request shall include:

- a) A concise statement of the error or errors contained in the decision being appealed;
- b) A clear statement of the relief being sought;
- c) Argument in sufficient detail to justify such relief; and
- d) Attachments of the full text of the decision being appealed and whichever of the following are applicable:
 - 1) The Respondent's Self-Reporting of a violation;
 - 2) The notice of Alleged Violation and the Respondent's response thereto;
 - 3) The report of the regional compliance program audit and the Respondent's response thereto; and/or
 - 4) The Respondent's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

1.3.2 Shortened Hearing Procedure

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

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

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

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

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

1.4 General Hearing Procedure

1.4.1 Notice of Hearing

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

1.4.2 Hearing Officer

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

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

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- c) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- d) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- e) To supervise and issue orders concerning discovery;
- f) To conduct prehearing conferences, status hearings and evidentiary hearings;
- g) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- h) To rule on and receive evidence;
- i) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- j) To issue protective orders pursuant to Paragraph 1.5.10;
- k) To issue initial opinions; and

- l) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

1.4.3 Hearing Panel

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

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

1.4.4 Interlocutory Review

A Participant shall be allowed to seek interlocutory review by the Hearing Panel of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall

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

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

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

A non-Participant that has been ordered by the Hearing Officer pursuant to paragraph 1.5.8 to produce or provide documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Panel of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to paragraph 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide document, information or testimony.

1.4.5 Disqualification

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

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Panel from a proceeding on grounds of a conflict of interest,

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

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

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

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

- a) Once a Respondent requests a hearing pursuant to Paragraph 1.3:
 - 1) neither the Hearing Panel, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that

- 2) the Hearing Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
 - A) in writing if the writing is simultaneously provided to all Participants; or
 - B) orally if a representative for every Participant is present in person or by telephone;
 - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.8 Appearances

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

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia or of another Applicable Governmental Authority (in the case of non-U.S.-related proceedings).

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

1.4.9 Failure to Appear or Exercise Diligence

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

1.4.10 Consolidation of Proceedings

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

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

1.5 Prehearing Procedure

1.5.1 [Intentionally left blank.]

1.5.2 Prehearing Conference

The purpose of the prehearing conference shall be to:

- a) Preliminarily identify the issues;
- b) Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
- c) Explore the possibility of obtaining admissions of fact and of the genuineness of documents that would avoid unnecessary proof;
- d) Develop a schedule for the preparation and submission of evidence and witness testimony in advance of the evidentiary hearing;
- e) Schedule a date(s) for the evidentiary hearing; and

- f) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

1.5.3 Summary Disposition

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

1.5.4 Status Hearings

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

1.5.5 Motions

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

1.5.6 Experts

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

1.5.7 Inspection and Copying of Documents in Possession of Staff**a) Documents to be Available for Inspection and Copying**

- (1) Within five (5) calendar days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:
 - (A) requests for information to the Respondent;
 - (B) every written request, including e-mail, directed to persons not employed by NERC to provide information or documents or to be interviewed;
 - (C) the documents provided in response to any such requests described in (A) and (B) above;
 - (D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;
 - (E) all other documents obtained from the Respondent; and
 - (F) all other documents obtained from persons not employed by NERC.

The sole bases pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7(b); provided, however, the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

- (2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Panel shall oversee the Staff's designation of documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary. (3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent not later than fourteen (14) calendar days after Staff receives such documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional documents available to the Respondent not less than ten (10) calendar days before the hearing. If Staff receives such documents ten or fewer calendar days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

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

b) Documents That May Be Withheld by Staff

- (1) Staff may withhold a document from inspection and copying by the Respondent if:
 - (A) the document is privileged to Staff or constitutes attorney work product of Staff's counsel (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);
 - (B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;
 - (C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of NERC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the NERC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or
 - (D) the Hearing Officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

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

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

c) Withheld Document List

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). Upon review, the Hearing

Officer may order Staff to make any document withheld available to the Respondent(s) for inspection and copying.

d) Timing of Inspection and Copying

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

e) Place and Time of Inspection and Copying

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

f) Copying Costs

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

g) Failure to Make Documents Available — Harmless Error

In the event that a document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing Panel shall determine whether the failure to make the document available was harmless error.

1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing. Unless otherwise directed by the Hearing Officer or Hearing Panel upon motion by a Participant or by the Hearing Officer, or by the Hearing Panel on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference

into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- a) The provisions of Subparagraphs (d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- c) The Hearing Officer and the Hearing Panel have the authority to issue orders to compel the appearance by or production of documents or information by, only any Person that (i) is a Participant, or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Panel do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony.
- d) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony.
- e) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Panel, (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Panel.
- f) Unless otherwise ordered by the Hearing Officer or Hearing Panel, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, request for admissions, or order to produce or provide documents, information, or testimony shall not specify a due date or response date that is fewer than 21 calendar days from the date of service of the request or date of the order.
- g) A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying.
- h) In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was

harmless error. The Hearing Officer or, upon review, the Hearing Panel shall determine whether the failure to make the document available was harmless error.

- i) Unless otherwise ordered by the Hearing Officer or Hearing Panel, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- j) Notwithstanding (f) and (i), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

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

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

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

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

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

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

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

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

1.5.10 Protective Orders

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

- proceeding to review the protected information while maintaining its proprietary status.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
 - e) The protective order shall identify the data, documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
 - f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
 - g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

1.5.11 Pre-Evidentiary Hearing Memorandum

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

1.6 Evidentiary Hearing Procedure

1.6.1 Evidentiary Hearings

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

1.6.2 Order of Receiving Evidence

In all proceedings Compliance Staff shall open and close.

1.6.3 Opening and Closing Statements

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

1.6.4 Right of Participant to Present Evidence

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

1.6.5 Exhibits

All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

1.6.6 Witness Attendance at Evidentiary Hearing

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

1.6.7 Admission of Evidence

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

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

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

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

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

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

1.6.9 Stipulations

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

1.6.10 Official Notice

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

- a) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of NERC and Regional Entities.
- b) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of NERC.

- c) State, provincial and federal statutes and municipal and local ordinances.
- d) The decisions of state, provincial and federal courts.
- e) Generally recognized scientific or technical facts within the specialized knowledge of the NERC.
- f) All other matters of which the courts of the United States may take judicial notice.

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

1.6.11 Admissibility of Evidence

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

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

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

1.6.12 Offer of Proof

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

1.6.13 Reservation of Evidentiary Ruling

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

1.6.14 Cross-Examination

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine

each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.6.15 Redirect Examination

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Panel. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Panel. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.6.16 Examination of Adverse Participant

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) calendar days in advance of the evidentiary hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) calendar days in advance of the evidentiary hearing. Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

1.6.17 Close of the Evidentiary Record

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

1.7 Post- Evidentiary Hearing Procedure

1.7.1 Briefs

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.

- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

1.7.2 Other Pleadings

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

1.7.3 Draft Initial Opinions

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

1.7.4 Hearing Officer's Initial Opinion

Except as otherwise ordered by the Hearing Panel, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Panel's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the Hearing Panel require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 1.5.10.

1.7.5 Exceptions

- a) Within twenty-one (21) calendar days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) calendar days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error asserted, and include a concise discussion of any policy

considerations applicable and any other arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designed "Exceptions," containing the suggested replacement language.

- c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- e) Statements of fact should be supported by citation to the record.
- f) The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page limitations shall not apply to a Participant's proposed replacement language.
- g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

1.7.6 Oral Argument

The Hearing Panel may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified by the Hearing Panel. The Hearing Panel will direct the NERC Director of Compliance to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

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

1.7.7 Additional Hearings

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Panel's own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen

the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

1.7.8 Hearing Panel Final Order

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order. Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Panel shall strive, but shall not be required, to issue its final order within thirty (30) calendar days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty". The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights pursuant to Section 400 of the Rules of Procedure.

1.7.9 The Record

The NERC Director of Compliance shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and documents filed therewith, that exist in any docket:

- a) Notice of Alleged Violation and Respondent's response thereto;
- b) Respondent's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- c) Remedial Action Directives and the Respondent's notice contesting the Remedial Action Directive;
- d) Respondent's request for a hearing;
- e) Participant filings, motions, and responses;
- f) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Panel;
- g) Transcripts;
- h) Evidence received;
- i) Written comments submitted in lieu of written testimony;

- j) Matters officially noticed;
- k) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- l) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- m) Post-hearing pleadings other than briefs;
- n) The Hearing Officer's initial opinion;
- o) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- p) The Hearing Panel's final order, any notice of Penalty issued therewith, and the NERC Director of Compliance's notice transmitting the final order to the Participants;
- q) All notices of ex parte communications; and
- r) Any notifications of recusal and motions for disqualification of a member of the Hearing Panel or Hearing Officer of Technical Advisor and any responses or replies thereto.

1.7.10 Appeal

A Final Order of the Hearing Panel may be appealed to NERC in accordance with NERC's Rules of Procedure, Subsections 409.5 et seq.

1.8 Settlement

Settlements may be entered into at any time pursuant to Section 5.4 of the NERC Compliance Monitoring and Enforcement Program and NERC's settlement procedures.

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Respondent at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Respondent in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program.

The Respondent may contest the Remedial Action Directive by filing a written notice with the NERC Director of Compliance that states that the Respondent contests the Remedial Action Directive and that the Respondent requests a Remedial Action Directive hearing. The Respondent shall attach a copy of the Remedial Action Directive to its written notice. The Respondent must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Respondent does not give written notice to the NERC Director of Compliance within the required time period, the Respondent shall be deemed to have waived its right to contest the Remedial Action Directive.

The NERC Director of Compliance shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.

1.9.2 Remedial Action Directive Hearing Procedure

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Paragraph 1.9.2. The full hearing procedures described in Paragraphs 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

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

- a) The Hearing Officer or the Hearing Panel will hold a prehearing conference within two (2) business days after receipt of the Respondent's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Respondent shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Respondent's closing argument.
- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the Hearing Panel. Oral argument shall not be held.
- f) The Hearing Panel shall issue a summary written decision within ten (10) calendar days following the hearing, stating whether the Respondent shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.

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

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NERC Compliance and Certification Committee Hearing Procedures for Use in Appeals of Certification Matters

CCC Monitoring Program — CCCPP-005-1

to ensure
the reliability of the
bulk power system

Version 1.0

NERC Compliance and Certification Committee		CCCPP-005-1
Title: Hearing Procedures for Use in Appeals of Certification Matters		
Version: 1.0	Revision Date: n/a	Effective Date: _____, 2009

Summary

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities.

Revision History

Date	Version Number	Comments
03/03/09	1.0	Approved by CCC

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1. Hearing Procedures for Use in Appeals of Certification Matters

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 and Appendix 5 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities. Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter and Appendix 5 of the NERC ROP. The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Panel on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the entity seeking Certification.

1.1.2 Deviation

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

1.1.3 Standards for Discretion

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

- a) Integrity of the Fact-Finding Process — The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness — Persons appearing in CCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant’s failure to act diligently and in good faith.
- c) Independence — The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- d) Balanced Decision-Making — Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the NERC’s conflict of interest policy.

- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

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

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

“Certification” means the process undertaken by NERC and a Regional Entity to verify that an entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator and/or Reliability Coordinator. Certification activities are further described in Section 500 and Appendix 5 of the NERC Rules of Procedure.

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

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

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

“Director of Compliance” means the NERC Director of Compliance, or his or her designee.

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

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

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means (1) a CCC member or (2) another individual employed or contracted by NERC, as designated by the CCC to preside over hearings conducted pursuant to these Hearing Procedures. The CCC shall approve the individual appointed as the Hearing Officer. The Hearing Officer will not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Paragraph 1.1.1 above. Specifically, the CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm’s length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

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

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

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

“Respondent” means the Registered Entity who is the subject of the Certification decision that is the basis for the proceeding.

“Staff” or “Certification Staff” means individuals employed or contracted by NERC who have the authority to make initial determinations of Certification of entities performing reliability functions.

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

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with the CCC must contain:

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

1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.

- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

1.2.3 Submission of Documents

a) Where to File

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from 8 a.m. to 5 p.m., Eastern, each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Panel. Filings will be considered made when they are date stamped received by the NERC Director of Compliance. To be timely, filings must be received no later than 5 p.m., Eastern, on the date specified.

c) How to File

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

d) Number of Copies to File

One original and seven exact copies of any document shall be filed. The NERC Director of Compliance will provide the Hearing Officer, if any, and each member of the Hearing Panel with a copy of each filing.

e) Signature

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

f) Verification

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

g) Certificate of Service

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

1.2.4 Service**a) Service List**

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

b) By Participants

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

c) By the NERC Director of Compliance

The NERC Director of Compliance shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Hearing Panel shall ensure that the NERC Director of Compliance has a copy of the record of a proceeding at the time it issues a final order.

d) Effective Date of Service

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

1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the NERC office is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the NERC office is closed.

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

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

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

1.2.9 Rulings, Notices, Orders and Other Issuances

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

1.2.10 Location of Hearings and Conferences

All hearings and oral arguments shall be held at NERC's principal office unless the Hearing Officer or the Hearing Panel designates a different location.

1.2.11 Participant Participation

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer or the Hearing Panel. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

1.2.12 Interventions Are Not Permitted

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings), no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

1.2.13 Proceedings Closed to the Public

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

1.2.14 Docketing System

The NERC Director of Compliance shall maintain a system for docketing proceedings to record appeals of Certification decisions. A docketed proceeding shall be created upon the issuance of a notice of an appeal of a Certification decision. Unless NERC provides a different docketing system that will be used, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "NERC", followed by a dash ("-"), followed by the letters "CERT" and a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

1.2.15 Hold Harmless

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

1.3 Initiation of the Hearing Process

1.3.1 Respondent's Option to Request a Hearing

To appeal a Certification decision, a Respondent must file a statement with the NERC Director of Compliance requesting a Certification hearing within fourteen (14) calendar days after (i) the Certification report or finding is issued, or (ii) the final regional entity appeal process ruling is made. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the Certification decision.

A hearing request shall include:

- a) A concise statement of the error or errors contained in the decision being appealed;
- b) A clear statement of the relief being sought;
- c) Argument in sufficient detail to justify such relief; and
- d) Attachments of the full text of the Certification decision being appealed and whichever of the following are applicable:
 - 1) the Respondent's statement explaining and supporting its disagreement with the Certification decision;
 - 2) all documents, including affidavits, supporting its position; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.

1.3.2 Hearing Procedure

The Hearing Panel may utilize a Hearing Officer to preside over the hearing procedure in accordance with Paragraph 1.4.2. No evidentiary hearing will be held, and the Participants will not present witness testimony or file briefs, except as requested by the Hearing Officer and/or the Hearing Panel. Instead, the following events shall take place within the following periods:

- a) Within ten (10) calendar days after the notice of hearing is issued, the Staff shall file:
 - 1) initial comments stating Staff's position on all issues raised by Respondent and the rationale in support of Staff's position, including all factual and legal argument;
 - 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- b) Within seven (7) calendar days of Staff's filing pursuant to Subparagraph (a), the Respondent shall file:
 - 1) responsive comments stating the Respondent's position on all issues presented by Staff and the rationale in support of Respondent's position, including all factual and legal argument which respond to Staff's filing;

- 2) all documents that the Respondent seeks to introduce in support of its position that have not already been submitted in the proceeding; and
- 3) a verification attesting to the truthfulness of the facts alleged in the filing.

The Hearing Officer or Hearing Panel may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Panel to issue the final order within twenty-nine (29) calendar days of the notice of hearing.

1.4 General Hearing Procedure

1.4.1 Notice of Hearing

Within seven (7) calendar days of a Respondent requesting a hearing pursuant to Paragraph 1.3, the NERC Director of Compliance shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place of the hearing, which should occur no less than twenty-one (21) calendar days and no later than twenty-eight (28) calendar days after the notice of hearing is issued.

1.4.2 Hearing Officer

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

The Hearing Panel may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing through the issuance of the opinion and any administrative hearing functions thereafter. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- c) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- d) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- e) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- f) To issue protective orders pursuant to Paragraph 1.4.10; and

- g) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel shall disclose the identity, employment history and professional affiliations of the Hearing Officer within two (2) calendar days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.4.

1.4.3 Hearing Panel

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

- a) The Hearing Panel shall receive all filings in a hearing.
- b) The Hearing Panel or any individual member thereof may, but is not required to, submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- c) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; or (ii) present oral argument on an issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- d) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- e) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order.

1.4.4 Disqualification

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

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.6, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within five (5) business days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

If a quorum (as defined in Paragraph 1.5.15) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

1.4.5 Technical Advisor

The Hearing Officer and/or the Hearing Panel may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

If the Hearing Officer or Hearing Panel uses a Technical Advisor to assist in any hearing, the Hearing Officer or Hearing Panel shall disclose the identity, employment history and professional affiliations of the Technical Advisor within two (2) calendar days of the Technical Advisor's assignment to the proceeding, and Participants to the hearing may raise objections to the Technical Advisor's participation in accordance with Paragraph 1.4.4.

1.4.6 No Ex Parte Communications

- a) Once a Respondent requests a hearing pursuant to Paragraph 1.3:
 - 1) neither the Hearing Panel, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
 - 2) the Hearing Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
 - A) in writing if the writing is simultaneously provided to all Participants; or
 - B) orally if a representative for every Participant is present in person or by telephone;

- C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Certification Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Certification Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.7 Appearances

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

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

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

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia or of another Applicable Governmental Authority (in the case of non-U.S.-related proceedings).

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

1.4.8 Failure to Appear or Exercise Diligence

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

1.4.9 Experts

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

1.4.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of a non-Participant ordered to produce documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any Regional Entity or any federal, state or foreign regulatory authority.
- c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the

- proceeding to review the protected information while maintaining its proprietary status.
- d) A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.
 - e) The protective order shall identify the data, documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
 - f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
 - g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

1.5 Hearing Procedure

1.5.1 Order of Argument

In all proceedings Respondent shall open and close.

1.5.2 Right of Participant to Present Evidence

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

1.5.3 Exhibits

All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide documents, information or testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. Except for exhibits created for demonstrative purposes, only documents (including affidavits) previously filed in the matter may be presented as exhibits. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence and must provide copies to the Participants and the Hearing Panel.

1.5.4 Witness Attendance at Hearing

Each witness shall attend the hearing in person only if a Participant has been informed in advance of the hearing that the witness needs to be present at the hearing. All testimony offered at the hearing is to be under oath or affirmation.

1.5.5 Admission of Evidence

Respondent shall offer its exhibits into evidence first and the Certification Staff second, unless the Participants agree otherwise.

If witnesses are required to attend the hearing, the Participants shall call each such witness in turn. Following the witness's swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the NERC Director of Compliance and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness's testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness's testimony, or any part thereof, as set forth in Paragraph 1.5.8. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.5.11, and then for redirect examination in accordance with Paragraph 1.5.12. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the hearing unless a Participant has served the witness's written testimony in advance of the hearing in accordance with Paragraph 1.3.1. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the CCC's policy to discourage witness testimony at a hearing when a Participant has not served the witness's written testimony in advance of the hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or

material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

1.5.7 Stipulations

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

1.5.8 Official Notice

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

- a) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of NERC and Regional Entities.
- b) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of NERC and Regional Entities.
- c) State, provincial and federal statutes and municipal and local ordinances.
- d) The decisions of state, provincial and federal courts.
- e) Generally recognized scientific or technical facts within the specialized knowledge of the NERC.
- f) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted as part of the filings made pursuant to Paragraph 1.3.1. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

1.5.9 Admissibility of Evidence

Any evidence offered shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

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

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

1.5.10 Offer of Proof

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

1.5.11 Evidentiary Ruling

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made.

1.5.12 Cross-Examination

Any witness personally attending the hearing shall be tendered for cross-examination subsequent to the admission of the witness's testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness's cross-examination by the other Participant, and prior to the witness's redirect examination pursuant to Paragraph 1.5.12. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.5.13 Redirect Examination

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Panel. Any redirect examination shall be limited in scope to the witness's cross-examination and questions of the Hearing Officer and members of the Hearing Panel. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.5.14 Close of the Evidentiary Record

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

1.5.15 Closing Statements

At the close of the hearing, Participants shall present oral closing statements. The Hearing Officer may establish reasonable time limitations applicable to closing statements.

1.5.16 Hearing Panel Final Order

Following the hearing, the Hearing Panel shall issue its final order. Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall

not be less than a quorum). The Hearing Panel shall issue its final order within one (1) day following the close of the hearing. The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights pursuant to Section 400 of the Rules of Procedure.

1.5.17 The Record

The NERC Director of Compliance shall maintain the record for all dockets. The record shall include all filings made in the matter, a transcript of the hearing, including all exhibits presented, the final order and any other written correspondence or communications between the Participants and either the Hearing Officer or the Hearing Panel.

1.5.18 Appeal

A Final Order of the Hearing Panel may be appealed to NERC in accordance with the NERC Organization Registration and Certification Manual, Section VI, Paragraph 4 of Appendix 5 to the NERC ROP.

Agenda Item 6c
Board of Trustees Meeting
May 6, 2009

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NERC Compliance and Certification Committee Mediation Procedures

CCC Monitoring Program – CCCPP-006-1

to ensure
the reliability of the
bulk power system

Version 1.0

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NERC Compliance and Certification Committee		CCCPP-006-1
Title: Mediation Procedures		
Version: 1.0	Revision Date: n/a	Effective Date: , 2009

Summary:

The NERC Compliance and Certification Committee (CCC) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity to understand and work through disagreements or disputes concerning NERC performance audits of a Regional Entity's compliance program.

Revision History:

Date	Version Number	Comments
12/09/08	1.0	Approved by the Compliance and Certification Committee 12/9/08

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1. Introduction

The NERC Compliance and Certification Committee (CCC) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity (RE) (NERC and the Regional Entity individually a Party, collectively, the Parties) to understand and work through disagreements or disputes concerning NERC performance audits of an RE's compliance program. Mediation is the intervention into a dispute or negotiation of an acceptable, impartial, and neutral third party panel that has no decision-making authority. The objective of the neutral third-party is to assist the parties in voluntarily reaching an acceptable resolution of the issues in dispute. The mediation process is voluntary and does not eliminate other dispute resolution options. Also, the mediation process is confidential, whether or not it results in settlement.

This alternative dispute resolution mechanism is intended to be a more collaborative, less adversarial method to attain a mutually agreeable resolution to the dispute, consistent with the NERC Rules of Procedure and without formal hearing proceedings.

The Parties to mediation are not obligated to reach agreement. If they do not reach a consensus, either Party may elect to proceed with other more "traditional" methods of resolving the dispute. In those instances where consensus is reached and memorialized in a written Mediation Settlement Agreement, the agreements of the entities as expressed therein will be binding and enforceable.

2. Mediators

The program follows a model of team mediation — having three mediators facilitate the mediation — in order to ensure a broad spectrum of perspectives and approaches to problem solving.

Once NERC and a RE have decided to pursue a resolution of their dispute through mediation, each Party will provide the chair of the CCC with introductory information (*i.e.*, brief statements of the nature and history of the dispute, participants' names, and contact information). Each Party must be represented by participants who will have the authority to enter into an agreement to resolve the matter in dispute, if the Parties are able to reach an agreement. The chair then provides the introductory information to three impartial and independent third party neutral members of the CCC to whom the chair assigns to serve as mediators and who are acceptable to both Parties. Subject to the consent of both Parties, the chair may appoint in addition to the CCC members a disinterested professional mediator who is acceptable to both Parties, with the cost of the professional mediator shared equally between the Parties. The mediators may choose, but are not required, to select one of their number as the Lead Mediator to coordinate the process and serve as their primary contact with the Parties; if a professional mediator is appointed by the chair, then that person will serve as the Lead Mediator. After reviewing the information provided by the Parties, the Lead Mediator, if any, or the mediators will communicate with the Parties to arrange an agreeable time and location for the mediation to be held.

Because mediation is an informal process and is only successful when a mutually agreeable resolution occurs, there is no single correct procedure required for mediators to follow. In any specific matter, one or more mediators may elect to discuss individual issues and concerns with one or more of the Parties prior to the session, one or more mediators may elect to wait until the mediation session to hold any discussion. Both approaches are acceptable.

The materials provided as introductory information and all communications made during or in connection with mediation will be kept confidential by the mediators and both Parties, and statements made by the Parties during mediation may not be used against them in later proceedings. The sole exception to this rule of confidentiality would be any written Mediation Settlement Agreement entered into by the Parties, as discussed below. Should the mediation be unsuccessful, no one who participated as a mediator will serve in any capacity in connection with any subsequent legal, regulatory, administrative, or grievance proceeding regarding the subject of the mediation.

Mediators will not provide legal advice or counsel. Mediators also may not be called to testify in any legal, regulatory, administrative, or grievance proceedings concerning the mediation or its subject, nor may they be requested to provide documentation, records, *etc.*, concerning the mediation.

3. Mediation Process

Mediators will focus on helping the Parties clearly identify their basic concerns and issues and use this information to develop a mutually agreeable resolution. To succeed, this approach must encourage and require open communication, cooperation, and participation.

Although no single process needs to apply to all mediations, generally a successful mediation will involve six elements:

- Introductory remarks;
- Statements of the issue(s) by the Parties;
- Information gathering;
- Issue identification;
- Determination and discussion of options; and
- A written Mediation Settlement Agreement.

Once the mediation process begins, Parties may discuss their interests and concerns with the mediators (and particularly with the Lead Mediator, if any) at any time.

In some cases, the Parties and mediators may agree that the mediation will adjourn and reconvene at a later agreed upon time and place. All participants should give the mediation every chance to resolve the dispute. Because mediation is a voluntary process, at any time, any participant may comment on any aspect of the process or propose changes. Also at any time, either Party or the mediators has the authority to terminate the mediation for any reason. If the mediation terminates without a written Mediation Settlement Agreement, either Party is free to pursue all other available legal, regulatory, administrative or grievance procedures.

Introductory Remarks

Early in the mediation, at a time when all participants are present, the mediators will introduce themselves and ask the participants to do likewise. Some mediators may make comments about what they see as the nature of the dispute and seek to confirm or clarify some of the factual data from the introductory information.

The mediators or Lead Mediator may describe ground rules intended to help the mediation move smoothly. Ground rules may include such things as turning off beepers and cell phones, appropriate conduct, mutual respect, note taking, and any other special instructions concerning the mediation. The mediators shall remind the Parties that the mediation process is confidential, whether or not it results in settlement.

From time to time during the mediation, the mediators may ask each Party's participants to meet separately from the other Party, or to "caucus," in order to discuss aspects of the dispute and possible resolution among themselves or with some or all of the mediators. Throughout the process, Parties should try not to interrupt each other; the mediators will give each Party the opportunity to fully share their side.

Statements of the Issue (s) by the Parties

The mediators will allow each Party the opportunity to explain, without interruption, its position and perception of the dispute. This statement is not necessarily a recital of the facts, but it is to give each Party an opportunity to frame the issues and to give the mediator more information on the Party's position. If a Party's attorney(ies) make the initial statement, the mediators may also invite the Party's other participants to supplement the statement. The intent is for each Party and the mediators to better understand the other Party's position or point of view.

Information Gathering

The mediators may ask one or both Parties questions, repeat back key ideas to the Parties, and summarize their understandings. This helps the mediators and Parties build rapport and ensure common understanding. Mediators will attempt to identify common agreements on the facts and to steer the discussion increasingly towards the future rather than merely reiterating the past.

Issue Identification

The mediators will try to identify the Parties' goals and interests in order to reach agreement on the nature of the issues that must be addressed in any resolution and the relationships between those issues. For example, a particular resolution of one issue may necessarily require a certain approach to another issue, or one issue must be resolved prior to another issue being resolved or even meaningfully discussed. It is possible that at some point the Parties may conclude that one or more of their issues can not be resolved through the mediation, but nonetheless decide to set those aside for later proceedings and move on to resolve through the mediation their other disputed issues.

Determination and Discussion of Options

Methods for developing options may include caucuses, group processes, discussion groups or sub-groups, developing hypothetical plausible scenarios, or a mediator's proposal where the mediator puts a proposal on the table and the parties take turns modifying it. If a caucus is held, discussions in the caucus are confidential and the mediators will not share those discussions with the other Party unless the Party in the caucus specifically asks them to do so.

To better explore potential solutions, the mediators may propose one or more brainstorming sessions by the Parties together or separately in caucus. This can lead to a final agreement, which diffuses the conflict and provides a new basis for future relations. The goal is to find some common ground by exploring lots of options, and to create possible solutions for the Parties to consider. Especially when meeting separately in caucus, through this process a Party may be able to entertain alternative solutions without committing to them as concessions.

Written Mediation Settlement Agreement

Mediation may be terminated at any time by either Party or by the mediators, but mediation has only successfully resolved the subject dispute when they Parties have executed a written Mediation Settlement Agreement.

As the parties reach a sense that they may be able to agree on all or some of the issues being mediated, the Parties and mediators can begin crafting language to address resolutions of the issues comprising the dispute. This language must be satisfactory to both Parties. The elements and wording of the agreement must be those of the Parties, and need to be specific enough that the Parties' intentions will be clear to others who may read it and to each participant at a later time.

It is important that each element of the agreement be listed separately and be specific, measurable, achievable, realistic, and set to a timetable.

The draft agreement probably will be reviewed and revised repeatedly by each Party and will continue to be edited, expanded, condensed, and rewritten as necessary until both Parties reach an acceptable settlement. Only after final agreement is reached on all its parts, and a final version memorialized in writing, will the Parties be asked to sign the Mediation Settlement Agreement to indicate their understanding of and agreement to the agreement and their willingness to abide by its provisions.

The Parties' mutual execution of the agreement resolves the dispute (or at least those aspects of the dispute addressed in the agreement if they decided to set aside any specific issues for later proceedings). An executed agreement is enforceable between the Parties in accordance with federal and state law.

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Monitoring Program for NERC's Adherence to NERC's Rules of Procedure for Registration and Certification

CCC Monitoring Program — CCCPP-007

to ensure
the reliability of the
bulk power system

Version 1.0

NERC Compliance and Certification Committee		CCCPP- 007
Title: Monitoring Program for NERC’s Adherence to NERC’s Rules of Procedure for Organization Registration and Certification		
Version: 1.0	Revision Date:	Effective Date: September 18, 2008

Summary:

The Compliance and Certification Committee (CCC) is a NERC Board-appointed stakeholder committee serving and reporting directly to the NERC Board of Trustees Compliance Committee (BOTCC) and is responsible for engaging with, supporting, and advising the NERC BOTCC and NERC regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program), and Organization Certification program (Certification program). In order to support this endeavor, the CCC has developed this procedure to implement an independent audit of the NERC Registration and Certification program as specified in Section 506 of the NERC Rules of Procedure (“ROP”) namely; to conduct an independent audit of its Registration and Certification program at least once every three years, or more frequently as determined by the NERC BOTCC.

Revision History:

Date	Version Number	Comments
September 18, 2008	1.0	Approved by the Compliance and Certification Committee - Dallas, TX

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1. Introduction

In the capacity of a NERC Board-appointed stakeholder committee serving and reporting directly to the NERC BOTCC the CCC will engage with, support and advise the NERC BOTCC and NERC Compliance regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program) and Organization Certification program (Certification program). Also and in a similar manner, as a committee independent of the Reliability Standards development process the CCC will be the body responsible for monitoring NERC's compliance with the Rules of Procedure regarding the Reliability Standards development process, with the exception of appeals of substantive or procedural action or inaction associated with a reliability standard or the standards process as defined in the appeals section of the Reliability Standards Development Procedure.

In order to support this endeavor, the CCC has developed this procedure to implement an independent audit of the NERC Registration and Certification program as specified in Section 506 of the NERC Rules of Procedure ("ROP") namely; to conduct an independent audit of its Registration and Certification program at least once every three years, or more frequently as determined by the NERC BOTCC. This audit shall be conducted by independent expert auditors and any audits conducted pursuant to this procedure shall be conducted in accordance with Section 2, subsection 7 and 8 of the [CCC Charter](#). This document describes the program and associated processes to be utilized by the CCC in carrying out this responsibility. While the aforementioned rules are the focal point of this program, the implementation of this program requires a comprehensive understanding of the Rules of Procedure.

As noted in the Board-approved CCC Charter, monitoring by the CCC is ongoing and does not preclude, interfere with, or replace, in whole or in part, the NERC BOTCC's responsibility to conduct and provide such reviews of these programs as required by FERC Order 672 at § 39.3.c: "The Electric Reliability Organization will submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter."

1.1. Terms

The terms defined below are applicable to this program only and are not intended to be applicable to or conflict with the same or similar terms used by NERC for other purposes.

1.1.1. Alleged Adverse Finding

A potential Adverse Finding for which the CCC has completed its accuracy and completeness review and has determined that evidence exists to support the finding.

1.1.2. Complaint

An allegation that NERC has not adhered to its Rules of Procedure for Registration and Certification.

1.1.3. Organization Registration and Certification Program Audit

A systematic, objective review and examination of records and activities to determine whether NERC has adhered to its Rules of Procedure for Organization Registration and Certification.

1.1.4. Adverse Finding Investigation

A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if there should be an Adverse Finding.

1.1.5. Adverse Finding

An event of non-adherence with Rules of Procedure for Registration and Certification identified by Self-Reporting, or an Alleged Adverse Finding which: (1) NERC has accepted as an Adverse Finding, or (2) was disputed by NERC but subsequently determined by the NERC BOTCC to be an Adverse Finding.

1.1.6. Mitigation Plan

An action plan developed by NERC to (1) correct an Adverse Finding and/or (2) prevent any recurrence of the Adverse Finding.

1.1.7. Periodic Data Submittals

Documents, procedures, data, process information or other information to demonstrate adherence to Rules of Procedure for Registration and Certification, and provided by NERC to the CCC.

1.1.8. Self-Certification

Periodic reporting by NERC of adherence or non-adherence with the Rules of Procedure for Registration and Certification.

1.1.9. Self-Reporting

A report by NERC of non-adherence or change in adherence with Rules of Procedure for Registration and Certification, based on its own assessment, and of any actions taken or that are being taken to resolve the non-adherence.

1.1.10. Spot-Checking

A process in which the CCC requests NERC to provide information to assess whether NERC complies with Rules of Procedure for Registration and Certification, this may include an on-site visit as deemed necessary by the CCC or BOTCC.

2. MONITORING PROCESSES

The CCC will monitor and assess NERC's adherence to its Rules of Procedure for Registration and Certification using the processes described below to collect information and make assessments. All monitoring activities will be conducted in a manner consistent with NERC Rule of Procedure 402.8.

2.1. Registration and Certification Program Audits

Registration and Certification Program Audits will be conducted at NERC's facility(s) in a manner consistent with the NERC Rule of Procedure 403.11.2. All Registration and Certification Program Audits will be conducted in accordance with audit guides, consistent with accepted auditing guidelines as approved by NERC.

2.1.1. Registration and Certification Program Audit Steps

At least four (4) months prior to commencement of a regularly scheduled audit, the CCC notifies NERC of the audit and requests that NERC recommend an independent contractor to oversee the audit and serve as the Audit Team Leader. NERC will provide a list of contractors (a minimum of two) to the CCC and recommend the independent contractor within one (1) month of receiving the notification. Within two (2) weeks of receiving NERC's recommendation, the CCC will accept or reject NERC's recommendation and notify NERC. If the independent contractor is rejected by the CCC, the CCC will inform NERC of the reasons for the rejection and request that NERC provide another recommendation within two (2) weeks. NERC will be responsible for funding the independent contractor.

At least two (2) months prior to commencement of a regularly scheduled audit, the CCC will identify other audit team members and their recent employment history, and request data from NERC, including a pre-audit questionnaire. Upon request of NERC, CCC will provide the recent employment history and biographies of the audit team members. If the audit team members change from the time of the original notification, the CCC will promptly notify NERC of the change and will allow time for NERC to object to the member (see Section 2.1.4).

NERC will provide the audit team the required information in the format specified in the request.

The audit team will review the submitted information for conformance with the Rules of Procedure for Registration and Certification prior to performing the audit. The audit team will then conduct an on-site audit following NERC audit guidelines. This will include conducting an exit briefing with NERC, providing for a review of the audit report with NERC before it is finalized, and issuing an audit report, including an assessment to the CCC of adherence with the Rules of Procedure for Registration and Certification.

The CCC will review the report developed by the audit team and complete an assessment of any Alleged Adverse Findings identified in the report. If the CCC concludes that a reasonable basis exists for believing an Adverse Finding has occurred, the CCC will notify NERC pursuant to the provisions of Section 4.

2.1.2. Frequency of Registration and Certification Audits

The CCC will perform full-scale Registration and Certification Program Audits of NERC at least every three (3) years or more frequently as determined by the CCC or the NERC BOTCC. Additionally, an unscheduled Registration and Certification Program Audit of NERC may be initiated by the CCC if reasonably determined to be necessary to determine NERC's adherence with the Rules of Procedure for Registration and Certification.

2.1.3. Scope of Registration and Certification Program Audits

A Registration and Certification Program Audit will include all elements of the Rules of Procedure for Registration and Certification.

2.1.4. Conduct of Registration and Certification Program Audits

The audit team will be comprised of (1) an independent contractor recommended by NERC and selected by the CCC, who will also serve as the Audit Team Leader, (2) at least one CCC member, and (3) additional industry experts selected by the CCC, generally from other NERC committees. Each audit team member must:

- Be free of conflicts of interests.
- Comply with the NERC Antitrust Compliance Guidelines and have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the CCC is applicable.
- Successfully complete NERC-approved Regional Entity auditor training.

Prior to the audit, copies of executed confidentiality agreements or acknowledgements will be provided to NERC and to the CCC.

NERC may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the CCC no later than fifteen (15) days prior to the start of on-site audit work. The CCC will make a final determination on whether the member will participate in the audit of NERC. Nothing in this paragraph will be read to limit the participation of FERC staff in the audit.

2.1.5. Registration and Certification Program Audit Reports

The audit team will develop a draft audit report that will include a description of the objective, scope, and methodology of the audit; identify any Alleged Adverse Findings; identify any mitigation activities which have been completed or pending in the year of the audit; and identify the nature of any confidential information redacted. The audit report may contain other recommendations of the audit team related to the findings. The draft report will be provided to NERC for comment.

The audit team will consider corrections based on comments of NERC and provide the final audit report to the CCC who will review the report and assess adherence with the Rules of Procedure for Registration and Certification and provide NERC and the NERC BOTCC with a copy of the final report. In the event the audit report identifies Alleged Adverse Findings, the final audit report, or pertinent part thereof, will not be released to the NERC BOTCC until after

such Alleged Adverse Findings have been addressed by NERC and the CCC pursuant to the provisions of Section 4.

Information deemed by the CCC or NERC as critical energy infrastructure information or confidential information will be protected in accordance with Section 1500 of the NERC Rules of Procedure.

2.2. Self-Certifications

NERC will certify its adherence with the Rules of Procedure for Registration and Certification with respect to a subset of performance items selected by the CCC on an annual basis as part of the CCC's Annual Monitoring Plan. Such Self-Certification will be achieved through reports to the CCC by a NERC officer or equivalent responsible for ensuring adherence with the Rules of Procedure for Registration and Certification.

2.3. Spot-Checking

The CCC may from time to time request NERC to provide information to assess whether NERC complies with the Rules of Procedure for Registration and Certification. Spot-Checking may also be initiated in response to events or a complaint. Results of the Spot-Check will be provided to NERC in accordance with Section 4 and will be reported to the NERC BOTCC in accordance with Section 6.

2.4. Adverse Finding Investigation

An Adverse Finding Investigation may be initiated at any time by the CCC in response to an event, a Complaint, or a possible Adverse Finding identified by any other means. Adverse Finding Investigations will follow the processes outlined for a Registration and Certification Program Audit.

2.5. Self-Reporting

NERC is encouraged to self-report to the CCC at the time NERC becomes aware (1) of any NERC non-adherence with the Rules of Procedure for Registration and Certification, or (2) a change in a previously identified Adverse Finding.

2.6. Periodic Data Submittals

If Periodic Data Submittals are required, the CCC will establish a team to review the data and provide the CCC with a report identifying any potential Adverse Findings. If any potential Adverse Findings are identified, an Adverse Finding Investigation will be conducted in accordance with Section 2.4.

2.7. Complaints

The CCC may receive Complaints alleging NERC non-adherence with Rules of Procedure for Registration and Certification. The CCC will conduct a review of each Complaint it receives to determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint, or if the Complaint provides sufficient basis for the CCC to conduct either an Adverse Finding Investigation in accordance with Section 2.4 or Spot-Checking in accordance with Section 2.3.

All anonymous Complaints will be reviewed and any resulting Adverse Finding Investigations or Spot-Checks will be conducted in a manner that will prevent disclosure of the identity of the complainant.

3. ANNUAL MONITORING PLAN

The CCC will maintain and update an Annual Monitoring Plan, to be carried out by the CCC in the performance of its responsibilities and duties in implementing this program. The plan will be provided to NERC and the NERC BOTCC by October 1 of each year and will specify reporting by NERC to the CCC that will provide verification of adherence through any of the monitoring methods described in Section 2 of this document. The implementation plan will be posted on the NERC Web site.

4. Notification and Resolution of Findings

Should the CCC allege that NERC has not adhered to NERC's Rules of Procedure for Registration and Certification; the CCC will provide written notice of the Alleged Adverse Finding to NERC. The notice of Alleged Adverse Finding will contain, at a minimum:

- the provision of the NERC Rules of Procedure for Registration and Certification with which NERC has allegedly not complied, the date and time the non-adherence occurred (or is occurring), and
- the facts the CCC believes demonstrate or constitute the non-adherence.

NERC will elect to either accept or dispute the Alleged Adverse Finding and report its election to the CCC. If NERC disputes the Alleged Adverse Finding, such report will include NERC's reasons for such dispute. If NERC has not provided such a report to the CCC within thirty (30) days after having been notified of the Alleged Adverse Finding, the CCC will deem NERC to have accepted the determination of an Adverse Finding.

No later than five (5) days after the CCC either receives NERC's report accepting or disputing the Alleged Adverse Finding or deems NERC to have accepted the Adverse Finding, the CCC will forward to the NERC BOTCC a copy of the notice of Alleged Adverse Finding previously provided to NERC, and a copy of NERC's report, if any, either accepting or disputing the Alleged Adverse Finding.

The NERC BOTCC will review the submitted information, determine if any further action is required, and notify the CCC of its determination.

5. Mitigation of Adverse Finding

If an Adverse Finding is determined (or if otherwise directed by the NERC BOTCC) NERC will (1) develop and implement a Mitigation Plan to correct the underlying non-adherence, or (2) provide the NERC BOTCC and the CCC with a description of how the non-adherence has been mitigated.

If a Mitigation Plan is developed, NERC will provide a copy of the Mitigation Plan to the CCC for review and recommendation to the NERC BOTCC, and will keep the CCC informed of NERC's progress toward completion of the Mitigation Plan.

5.1. Contents of Mitigation Plans

The Mitigation Plan should include the following information:

- NERC's point of contact for the Mitigation Plan, who will be a person (1) responsible for implementing the Mitigation Plan, (2) technically knowledgeable regarding the Mitigation Plan, and (3) authorized and competent to respond to questions regarding the status of the Mitigation Plan.
- The non-adherence with the Rules of Procedure for Registration and Certification that the Mitigation Plan will correct.
- The cause of the non-adherence.
- NERC's action plan to correct the non-adherence.
- NERC's action plan to prevent recurrence of the non-adherence.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the non-adherence corrected.
- Mitigation Plans are expected to be completed within three (3) months. However Mitigation Plans with expected completion dates more than three (3) months from the date of submission shall include implementation milestones no more than three (3) months apart. Additional Adverse Findings could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate by the CCC and/or NERC BOTCC.

5.2. Timetable for Completion of Mitigation Plans

The Mitigation Plan should be completed in time to have a reasonable potential to correct all of the non-adherence prior to the next applicable reporting/assessment period after occurrence of the non-adherence for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay.

NERC will advise the CCC of any extensions of any milestones or the completion dates of a Mitigation Plan for review and recommendation to the NERC BOTCC.

5.3. Review of Mitigation Plans

Within thirty (30) days of receipt of the Mitigation Plan, the CCC will review the Mitigation Plan, and will advise the NERC BOTCC of any concerns the CCC has related to a Mitigation Plan.

5.4. Completion/Confirmation of Implementation of Mitigation Plans

NERC will inform the CCC when implementation of a Mitigation Plan has been completed.

6. Reporting and Disclosure

The CCC will report to the NERC BOTCC, on a confidential basis, any Alleged Adverse Findings regardless of significance, within five (5) business days after giving NERC notice pursuant to Section 4. Such reports will include information regarding the nature of the Alleged Adverse Finding and the name of a NERC staff person knowledgeable of the Alleged Adverse Finding.

The CCC will report to the NERC BOTCC at least quarterly the status of Adverse Finding Investigations, regardless of significance, that have not yet resulted in a determination of Alleged Adverse Finding, and of any Adverse Findings for which mitigation activities have begun but have not been completed.

All Complaints received will be communicated to the NERC BOTCC by the CCC along with the disposition of the Complaint.

In addition to other reporting requirements outlined in this document, the CCC will provide an annual report to the NERC BOTCC of the CCC's monitoring activities regarding NERC's adherence to Rules of Procedure for Registration and Certification.

7. Data Retention and Confidentiality

7.1. Records Management

All records associated with the program will be maintained by NERC staff. The associated records management policy will provide for a routine and orderly process for the retention and disposal of electronic and paper records related to this program, ensure verification of compliance with appropriate business, regulatory, and legal requirements. The policy will allow for the maintenance of records as required to implement the CCC's monitoring of NERC's adherence with Rules of Procedure for Registration and Certification.

7.2. Retention Requirements

NERC's records management policy will require that information and data generated or received pursuant to activities associated with this program be retained for a minimum of five (5) years. If the information or data is material to the resolution of a controversy, the retention period for such data will not commence until after the controversy is resolved.

7.3. Confidentiality of Information

NERC and the CCC will maintain confidentiality of all Confidential Information in accordance with Section 1500 of the NERC Rules of Procedure. Information deemed to be critical energy infrastructure information will be redacted and will not be released publicly.

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NERC Compliance and Certification Committee

2009 Work Plan

to ensure
the reliability of the
bulk power system

Revision 2.0

March 12, 2009

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NERC Compliance and Certification Committee

Title: 2009 Work Plan		
Version	Date	Effective Date
1.0	12/10/2008	12/10/2008
2.0	3/12/2009	3/12/2009

Summary:

The Compliance and Certification Committee (CCC) is a NERC board-appointed stakeholder committee serving and reporting directly to the NERC Board of Trustees Compliance Committee (BOTCC) and is responsible for engaging with, supporting, and advising the NERC BOTCC and NERC regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program), and Organization Certification program (Certification program). In order to support this endeavor, the CCC has developed this procedure to implement an independent audit of the NERC Registration and Certification program as specified in Section 506 of the NERC Rules of Procedure (“ROP”) namely; to conduct an independent audit of its Registration and Certification program at least once every three years, or more frequently as determined by the NERC BOTCC.

Revision History:

Date	Version Number	Comments
12/10/2008	1.0	Approved by the CC 12/10/2008
1/12/09	2.0	Approved by the CCC 3/12/08

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1. Purpose

The purpose of this plan is to identify the anticipated activities of the NERC Compliance and Certification Committee (CCC) for the year 2009. The plan is based on the responsibilities assigned to the CCC by the NERC Board of Directors, programs, and tasks identified by the CCC required to accomplish these responsibilities.

2. Introduction

In the capacity of a NERC board-appointed stakeholder committee serving and reporting directly to the NERC board, the Compliance and Certification Committee will engage with, support, and advise the NERC board and NERC Board of Trustees Compliance Committee (BOTCC) regarding all facets of the NERC Compliance Monitoring and Enforcement Program (CMEP), Organization Registration program (Registration program) and Organization Certification program (Certification program). As a committee providing support and advice but otherwise independent of the execution of these programs, the CCC will monitor NERC's compliance with the Rules of Procedure for these programs on an ongoing basis. Also, and in a similar manner, as a committee independent of the Reliability Standards development process, the CCC will be the body responsible for monitoring NERC's compliance with the Rules of Procedure regarding the Reliability Standards development process, with the exception of appeals of substantive or procedural action or inaction associated with a Reliability Standard or the standards process as defined in the appeals section of the Reliability Standards Development Procedure.

The CCC provides for balanced discussion, commentary, and recommendations on compliance issues by bringing together a wide diversity of opinions and perspectives from NERC member sector experts who have particular familiarity, knowledge, and experience in the area of compliance and NERC and Regional standards. Members are appointed to the CCC by the NERC board and serve on the committee at the pleasure of the board.

Individuals deemed qualified to serve on the committee will generally include senior level industry experts who have particular familiarity, knowledge, and experience in the area of compliance, compliance enforcement, compliance administration and management, organization responsibilities and registration, organization certification, and NERC and Regional standards.

These individuals should be involved with internal compliance programs within their respective organizations. Committee members are expected to represent the interests of the sector they represent, to the best of their ability and judgment.

3. CCC Organization

In addition to certain core responsibilities, the CCC has established various subcommittees to perform certain tasks on behalf of and under the supervision of the CCC.

Key responsibilities of these subcommittees are as follows:

3.1 Organization Registration and Certification Subcommittee

To fulfill its mission, the CCC has established the Organization Registration and Certification Subcommittee (ORCS) to perform the following tasks on behalf of and under the supervision of the CCC:

1. Advise and provide support to NERC and the Regional Entities with development and implementation of organization registration and certification processes (i.e., RoP 500 & Appendix 5).
2. Advise and provide ongoing support to NERC and the Regional Entities relating to approved organization registration and certification processes.
3. Evaluate the success and effectiveness of NERC and the Regional Entities' administration of the organization registration and certification processes.
4. Establish programs to monitor NERC's and the Regional Entities' implementation of the organization registration and certification processes.

3.2 Standards Interface Subcommittee

To fulfill its mission, the CCC has established the Standards Interface Subcommittee (SIS) to perform the following tasks on behalf of and under the supervision of the CCC:

1. Advise and prepare recommendations to the CCC to address any standards related issues relevant to and within the scope of the CCC (e.g. request from the Standards Committee, Standard Drafting Team, CCC, NERC Compliance Staff, etc).
2. Act as liaison of the CCC to the NERC Standards Committee.
3. Implement CCC oversight, facilitate, and participate as needed in the development of the Compliance Administration Elements (CAEs) for new Reliability Standards under development or for revisions to existing Reliability Standards.
4. Identify personnel to serve on the Compliance Administration Element (CAE) drafting teams as needed.
5. Prepare and maintain guidance and other related documents and materials for the benefit of Standards Drafting Teams regarding the development of CAEs.

3.3 ERO Monitoring Subcommittee

To fulfill its mission, the CCC has established the ERO Monitoring Subcommittee (EROMS) to perform the following tasks on behalf of and under the supervision of the CCC:

1. Establish and implement programs to monitor NERC's compliance with the Reliability Standards that apply to NERC.

2. Establish and implement programs to monitor NERC's adherence to the Rules of Procedure regarding the NERC CMEP as specified in Section 405 of NERC's Rules of Procedure.
3. Establish and implement programs to monitor NERC's adherence to the Rules of Procedure regarding the Reliability Standards Development Process with the exception of appeals of substantive or procedural action or inaction associated with a Reliability Standard or the standards process as defined in the appeals section of the Reliability Standards Development Procedure as specified in Section 405 of NERC's Rules of Procedure.
4. Develop criteria for use by NERC for the annual evaluation of the goals, tools, and procedures of each Regional Entity Compliance Enforcement Program in the determination of the effectiveness of each Regional Entity program as specified in Section 402.1.2 of NERC's Rules of Procedure.

3.4 Procedures Subcommittee

To fulfill its mission, the CCC has established the Procedures Subcommittee (PROCS) to perform the following tasks on behalf of and under the supervision of the CCC:

1. Perform document review to promote consistency between multiple documents (procedures, policies, standards, rules, orders, etc.) that comprise the overall NERC CMEP and to assure documents are clear, unambiguous, consistent and complementary.
2. Advise the CCC of any such unclear, ambiguous, or inconsistent portions of the CMEP documents and propose changes to the documents that it believes will clarify an unclear, ambiguous, or inconsistent situation.
3. Develop methods to actively solicit information with respect to stakeholder perception of the procedures, policies, standards, rules, orders, etc. and the effectiveness of the NERC CMEP and provide this information to the CCC and applicable CCC subcommittees.
4. Develop and maintain CCC operational procedures with respect to the CCC responsibilities under the CCC Charter.

3.5 CCC Nominating Committee

The CCC annually appoints a Nominating Subcommittee. The subcommittee consists of five members nominated by the CCC chair and approved by the committee. The chair of the subcommittee will be selected by the CCC chair from among the five subcommittee members. Members of the Nominating Subcommittee prepare a slate of committee officer candidates for submission to the NERC board for approval and prepare a slate of recommended individuals to fill designated committee vacancies as required.

For the year 2009, the Nominating Committee will continue to identify qualified candidates to submit to the NERC board for approval for those industry sections that require representation.

3.6 Key Responsibilities Not Assigned to Subcommittees

In addition to tasks assigned to subcommittees on behalf of and under the supervision of the CCC, the overall committee, in general caucus, will continue to address certain key responsibilities. These include:

1. Provide comments to NERC with respect to stakeholders' perception of the policies, practices, consistency, and effectiveness of the compliance, registration, and certification programs.
2. Recommend revisions of the NERC Rules of Procedure related to the compliance, registration, and certification programs to the NERC board.
3. Establish hearing bodies, as directed by the NERC board, for any contest regarding findings of, or penalties or sanctions for, violation(s) of Reliability Standard(s) where NERC is directly monitoring the entity for compliance with those standards (registered entity by agreement with a Regional Entity or absent a delegation agreement; the region itself where approved standards are applicable to the Region) as described in the NERC Rules of Procedure Section 409.
4. Serve as a mediator, as directed by the NERC board, for any disagreements between NERC and the Regional Entities concerning NERC performance audits of Regional Entities' compliance programs.
5. Participate in, and provide team leadership for, Regional Entity compliance program audits that are conducted at least once every three years.

4. Compliance and Certification Committee Programs

These programs will include specific activities such as periodic On-Site Audits, NERC Self Certifications, CCC Spot Checking, CCC Adverse Finding Investigations, NERC Self Reporting, Periodic Data Submittals, and CCC Review of Stakeholder Complaints.

The programs are as follows:

4.1 CCCPP-001

Monitoring Program for NERC's Adherence to NERC's Rules of Procedure

This program has been established so that the CCC can monitor NERC's adherence to its Rules of Procedure. The NERC CCC EROMS will coordinate this effort.

4.2 CCCPP-002

Compliance Monitoring Program for Reliability Standards Applicable to NERC

This program has been established so that the CCC can monitor NERC's adherence to Reliability Standards applicable to NERC. The CCC will use a variety of activities to perform the monitoring. The NERC CCC EROMS will coordinate this effort.

4.3 CCCPP-003

Monitoring Program for NERC's Reliability Standards Development Procedure

This program has been established so that the CCC can monitor NERC's adherence to its Rules of procedures concerning Reliability Standards Development. The NERC CCC EROMS will coordinate this effort.

4.4 CCCPP-007

Monitoring Program for NERC's Adherence to NERC's Rules of Procedure for Organization Registration and Certification

This program has been established so that the CCC can monitor NERC's adherence to its Rules of Procedure for Organization Registration and Certification. The NERC CCC ORCS will coordinate this effort.

4.5 CCCPP-008

Program for Monitoring Stakeholders' Perceptions of NERC Compliance Program, Registration Program, and Certification Program

This program has been established so that the CCC can gather and report to the Board of Trustees stakeholder perceptions with respect to the NERC CMEP and the way the NERC CMEP is administered. The CCC will coordinate this effort.

4.6 CCCPP-011

Program for Developing/Reviewing the Criteria for Annual Regional Entity Audits and CMEP Compliance Audits.

This program is to identify the criteria by which these audits are conducted, provide a guidance letter to NERC regarding these criteria, and document the process for the CCC to annually review and affirm these for use.

5. 2009 Implementation Activities for the CCC Programs

5.1 Self Certifications

In accordance with CCCPP-001, the EROMS will develop a subset of performance items related to the Rules of Procedure for Compliance Monitoring and Enforcement Program. The CCC will then request that NERC self-certify adherence to Rules of Procedure for Compliance Monitoring and Enforcement Program with respect to the subset of performance items by providing the CCC with a report at its second regularly scheduled meeting in 2009.

In accordance with CCCPP-002, the EROMS will identify the Reliability Standards applicable to NERC. The CCC will then request that NERC self-certify adherence to the Reliability Standards applicable to NERC by providing the CCC with a report at its second regularly scheduled meeting in 2009.

In accordance with CCCPP-003, the SIS will develop a subset of performance items related to the Reliability Standards Development Procedure. The CCC will then request that NERC self-certify adherence to the Reliability Standards Development Procedure with respect to the subset of performance items by providing the CCC with a report at its first regularly scheduled meeting in 2009.

In accordance with CCCPP-007, the ORCS will develop a subset of performance items related to the Rules of Procedures for Organization and Registration. The CCC will then request that NERC self-certify adherence to the Rules of Procedure for Organization Registration and Certification with respect to the subset of performance items by providing the CCC with a report at its second regularly scheduled meeting in 2009.

The four above described reports will be in the form of a presentation provided by a NERC officer or equivalent responsible for ensuring adherence to the above identified four elements of the Rules of Procedure. The presentation will identify adherence to the rules as well as any areas of non-adherence. The CCC will include the results of the self-certifications in these four areas in a report to the Board.

5.2 Audits and Reviews

In accordance with CCCPP-001, the CCC will perform a full-scale Audit of NERC's adherence with the Rules of Procedure for Compliance Enforcement every three years with a lower scale audit annually. Additionally, an unscheduled Audit may be initiated by the CCC if reasonably determined to be necessary to determine NERC's adherence with the Rules of Procedure for Compliance Enforcement. **The CCC plans to perform a lower scale Review in 2009 and an On-Site full-scale Audit in 2010.** The audit team will develop a draft audit report, review it with NERC, make any necessary changes, and then prepare a final report to be submitted to the CCC. The CCC will review/assess the report and provide NERC a final copy. The CCC will advise the NERC board of any

Adverse Findings and include the results of the Review or Audit in the report to the board.

In accordance with CCCPP-002, the CCC will perform a full-scale Audit of NERC's compliance with Reliability Standards applicable to NERC every three years with a lower scale Review annually. Additionally, an unscheduled Audit may be initiated by the CCC if reasonably determined to be necessary to determine NERC's compliance with Reliability Standards. **The CCC plans to perform a lower-scale Review in 2009 and tentatively plans to perform an On-Site full-scale Audit of NERC in 2011.** The audit team will develop a draft audit report, review it with NERC, make any necessary changes, and then prepare a final report to be submitted to the CCC. The CCC will review/assess the report and provide NERC a final copy. The CCC will advise the NERC board of any Alleged Violations and include the results of the Audit in the report to the board.

In accordance with CCCPP-003, the CCC will perform a full-scale Review of NERC's adherence with the Reliability Standards Development Procedure every three years with a lower-scale Review annually. Additionally, an unscheduled Review may be initiated by the CCC if reasonably determined to be necessary to determine NERC's adherence with the Reliability Standards Development Procedure. **The CCC plans to perform an On-Site full-scale audit in 2009.** The audit team will develop a draft review report, review it with NERC, make any necessary changes, and then prepare a final report to be submitted to the CCC. The CCC will review/assess the report and provide NERC a final copy. The CCC will advise the NERC board of any Preliminary Adverse Findings and include the results of the Audit in the report to the Board.

In accordance with CCCPP-007, the CCC will perform a full-scale Audit of NERC's adherence with Rules of Procedure for Organization Registration and Certification every three years with a lower-scale audit annually. Additionally, an unscheduled Audit may be initiated by the CCC if reasonably determined to be necessary to determine NERC's adherence with the Rules of Procedure for Organization Registration and Certification. **The CCC will perform a lower-scale Audit of NERC in 2009 and 2010 and will tentatively plan to perform an On-Site full-scale Audit of NERC in 2011.** The audit team will develop a draft review report, review it with NERC, make any necessary changes, and then prepare a final report to be submitted to the CCC. The CCC will review/assess the report and provide NERC a final copy. The CCC will advise the NERC board of any Alleged Adverse Findings and include the results of the Audit in the report to the Board.

5.3 Investigations

In accordance with CCCPP-001, the CCC may initiate an Adverse Finding Investigation at any time as directed by the NERC board or based on an event, complaint, or other possible Adverse Finding identified by any other means. Adverse Finding Investigations will follow the processes outlined in a Compliance Program Audit.

In accordance with CCCPP-002, the CCC may initiate a Reliability Standard Compliance Violation Investigation at any time as directed by the NERC board or based on an event, complaint, or other possible violation of a Reliability Standard identified by any other

means. Reliability Compliance Violation Investigations will follow the processes outlined in a Compliance Program Audit.

In accordance with CCCPP-003, the CCC may initiate a Standards Development Process Review Investigation at any time as directed by the NERC board or in response to a complaint or evidence that NERC has not adhered to the Standards Development Process Procedures. Standards Development Process Review Investigations will follow the processes outlined for a Standards Development Process Review.

In accordance with CCCPP-007, the CCC may initiate an Organization Registration and Certification Investigation as directed by the NERC board or at any time in response to a complaint or evidence that NERC has not adhered to the Rules of Procedure for Organization Registration and Certification. Adverse Finding Investigations will follow the processes outlined for a Registration and Certification Program Audit.

5.4 Spot Checks

In accordance with CCCPP-001, the CCC may from time to time request NERC to provide information to assess whether NERC adheres to the Rules of Procedure for Compliance Enforcement. Spot checking may also be initiated in response to a directive from the NERC board or to events or a complaint. Results of spot checks will be provided to NERC and will be reported to the NERC board.

In accordance with CCCPP-002, the CCC may from time to time request NERC to provide information to assess whether NERC complies with the Reliability Standards applicable to NERC. Spot checking may also be initiated in response to events or a complaint. Results of spot checks will be provided to NERC and will be reported to the NERC board.

In accordance with CCCPP-003, the CCC may from time to time request NERC to provide information to assess whether NERC adheres to the Reliability Standards Development Process. Spot checking may also be initiated in response to a directive from the NERC board or to events or a complaint. Results of spot checks will be provided to NERC and will be reported to the NERC board.

In accordance with CCCPP-007, the CCC may from time to time request NERC to provide information to assess whether NERC adheres to the Rules of Procedure for Organization Registration and Certification. Spot checking may also be initiated in response to a directive from the NERC board or to events or a complaint. Results of spot checks will be provided to NERC and will be reported to the NERC board.

5.5 NERC Audits of Regional Entities

A CCC member will participate in each audit of a Regional Entity by NERC. The EROMS is currently anticipating the development of **CCCPP-010 — Process for Developing/Reviewing the Criteria for Annual Regional Entity Audits and CMEP Compliance Audits**. The deliverable from the implementation of this program is to identify the criteria by which these audits are conducted, provide a guidance letter to NERC regarding these criteria, and document the process for the CCC to annually review and affirm these for use. It is anticipated that these criteria would be extracted from the

underlying assumptions contained in the Compliance Process Audit Worksheets applicable to these types of audits.

5.6 Monitoring Stakeholder Perceptions

As stated in the CCC Charter in Section 3, Committee members are expected to represent the interests of the sector they represent, to the best of their ability and judgment. Members are expected to solicit comments and opinions from constituents and groups of constituents or trade organizations represented by the member and convey them to the CCC. In early 2009, all committee members will participate in documenting comments to NERC, with respect to stakeholders' perception of the policies, practices and effectiveness of the Compliance program, Registration program, and Certification program. The EROMS will lead, direct, and initiative these reviews and surveys of CCC members and provide recommendations for consideration by the CCC.

The EROMS is currently completing development of CCCPP-008 - **Program for Monitoring Stakeholders' Perceptions of NERC Compliance Program, Registration Program, and Certification Program**. The EROMS will complete development of an initial draft of this program in early 2009 for CCC approval, and will finalize the program by the end of 2009. The CCC will initiate activities to carry out some of the elements included in the program by the end of 2009. An element of this program, in addition to obtaining direct feedback from committee members, expected to be carried out in 2009 will include conducting surveys of stakeholders through the arrangement of an industry-wide WebEx seminar in the first half of the year. Depending on the level and nature of the feedback gathered, additional elements of the program may include seeking stakeholder feedback in a CCC-sponsored segment contemporaneous with Regional Entity Compliance Workshops or in conjunction with existing stakeholder compliance working groups. Part of the communication provided in advance would include the explanation of the roles/functions of the CCC, the survey elements being considered, and the manner for providing feedback report to the NERC board and the stakeholders. Additional methods of communicating with stakeholders may include providing information regarding the survey in the NERC Newsletter and direct e-mails to stakeholders.

An important element of the Program will be an annual report, presented to the CCC for approval to forward to NERC, the NERC board, and the stakeholders, as well as quarterly stakeholder perceptions reports to the CCC. In addition, an Annual Effectiveness Monitoring Plan for the subsequent year will be provided to NERC by October 1.

Longer term activities, beyond 2009, may include mechanisms for the CCC to directly receive feedback from stakeholders following audits and any of the other effectiveness monitoring inputs or evaluations surrounding the effectiveness metrics endorsed in CCCPP-008.

6. CCC Projects/Subcommittee Activities

- 6.1. CCC Projects/Activities
 - 6.1.1. CCC Member Audit Training
 - 6.1.2. CCC Member Hearing Training
 - 6.1.3. Perform a (ongoing) Self Assessment process
 - 6.1.4. Act upon reports and recommendations provided by SC activities
- 6.2. ORCS Activities
 - 6.2.1. Changes to Section 500 NERC Rules of Procedures
 - 6.2.2. Provisional Certification
 - 6.2.3. Plan for review (audit) of the NERC Compliance Registration and Certification
- 6.3. EROMS Activities
 - 6.3.1. Finalize and implement Program for Monitoring Stakeholders' Perceptions of NERC Compliance program, Registration program, and Certification Program
 - 6.3.2. Conduct an full-scale on-site audit of Standards Development Procedures during the second and third quarters of 2009
 - 6.3.3. Review and summarize information received from stakeholders
 - 6.3.3.1. Solicit survey input from the CCC members for report by March 2009
 - 6.3.3.2. Develop quarterly and annual reports for the CCC
 - 6.3.3.3. Implement surveys, webinars, and conduct workshop venues
 - 6.3.3.4. Develop an annual plan by 10/1
 - 6.3.4. Review the Self Certifications for (1) Reliability Standards applicable to NERC (2) the compliance monitoring and enforcement procedure and (3) the organization registration and certification Rules of Procedure.
 - 6.3.4.1. Prepare reports to the CCC
 - 6.3.5. Develop and implement a process document to develop and review the criteria for annual Regional Entity Evaluations and CMEP compliance audits in early 2009.
 - 6.3.5.1. Provide guidance letter to NERC containing relevant criteria
- 6.4. SIS Activities
 - 6.4.1. Compliance Administrative Elements Resource Pool
 - 6.4.2. Plan for a review (audit) of standards development protocol
 - 6.4.3. Carry out drafting team functions
- 6.5. PROCS Activities
 - 6.5.1. Finalize Hearing Procedures
 - 6.5.2. Finalize Certification Appeals Procedures
 - 6.5.3. Finalize Mediation Procedures
 - 6.5.4. Review and format new CCC Programs

7. Hearing/Mediation Responsibilities

- (A) The CCC will conduct hearings as necessary to fulfill its function of serving as the hearing body for any contest between NERC and a Regional Reliability Organization (RRO) or Regional Entity (RE) regarding NERC findings of or penalties or sanctions for violation(s) of Reliability Standard(s) by the RRO or RE as described in the NERC Rules of Procedure Section 409.

(Note: The CCC's hearing procedures shall follow the hearing procedure mandated and approved by jurisdictional authorities for use by NERC and the REs in the Compliance program.)

- (B) The CCC will conduct hearings as necessary to fulfill its function of serving as a hearing body for any Registered Entity appeal regarding the determination that a Registered Entity is not qualified to be certified to perform the functional activities that require certification by NERC.

(Note: The Certification Appeal Hearing will be conducted on an expedited basis.)

- (C) The CCC will conduct mediation activities when requested by the NERC board.

The CCC hearing and mediation procedures are described in the documents identified below:

CCCPP-004 — CCC Hearing Procedures

CCCPP-005 — CCC Hearing Procedures for Use in Appeals of Certification Matters

CCCPP-006 — CCC Mediation Procedures

8. Meetings (2009)

CCC quarterly meetings:

March 11-12

June 10-11

September 9-10

December 9-10

CCC Subcommittee meetings as needed

9. NERC Board Assignments

The CCC undertakes assignments from the NERC board or the board's Compliance Committee related to compliance, organization registration, and organization certification.

10. Logistics Requirements for CCC Activities

Listed below are items identified by the CCC that NERC should take into account with respect to costs NERC will incur concerning CCC activities for 2009.

- 1) CCC Quarterly Meetings (Cost to be determined by NERC)
 - (a) Assumptions:
 - (b) NERC staff attend
 - (c) NERC travel expenses
 - (d) Hotel (Conf Room and Food)

- 2) Hearings (Cost to be determined by NERC)
 - (a) Assumptions:
 - (b) Administrative Law Judge fee and travel costs
 - (c) Transcription costs
 - (d) Travel expenses

- 3) Certification Appeal Hearings (Cost to be determined by NERC)
 - (a) Assumptions:
 - (b) Administrative Law Judge fee and travel costs
 - (c) Transcription costs
 - (d) Travel expenses

- 4) Mediation (Cost to be determined by NERC)
 - (a) Assumptions:
 - (b) Mediator fee and travel expenses

- 5) Compliance Audit (Cost to be determined by NERC)
 - (a) Assumptions:
 - (b) One audit anticipated in 2009
 - (c) Independent Contractor fee and travel expenses

- 6) WebEx/Conference Calls (Cost to be determined by NERC)
 - (a) Assumptions:
 - (b) CCC and CCC Subcommittees will utilize

Three-Year Performance Assessment

Board Action Required

Discussion only, as necessary (the item is also scheduled for discussion as Agenda Item 8 for the Member Representatives Committee's May 5 meeting.)

Background

Section 39.3(c) of FERC's regulations requires NERC to file a performance assessment three years following its certification as the "electric reliability organization" under section 215 of the Federal Power Act and every five years thereafter. NERC's first performance assessment is due July 20, 2009. As a part of its performance assessment, NERC must include a performance assessment for each of the eight organizations designated as Regional Entities in the delegation agreements NERC entered into and FERC approved. Section 39.3(c)(1) of FERC's regulations is specific about what must be included in the performance assessment:

- “(1) The Electric Reliability Organization's assessment of its performance shall include:
 - “(i) An explanation of how the Electric Reliability Organization satisfies the requirements of § 39.3(b) [NOTE: Section 39.3(b) sets out the criteria NERC had to meet to become certified as the electric reliability organization];
 - “(ii) Recommendations by Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Electric Reliability Organization's operations, activities, oversight and procedures, and the Electric Reliability Organization's response to such recommendations; and
 - “(iii) The Electric Reliability Organization's evaluation of the effectiveness of each Regional Entity, recommendations by the Electric Reliability Organization, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Regional Entity's performance of delegated functions, and the Regional Entity's response to such evaluation and recommendations.”

In orders subsequent to Order No. 672, FERC has indicated additional items that it wishes to see discussed in the three-year performance assessment filing.

NERC and the Regional Entities posted a draft of background material for the three-year performance assessment on January 14, 2009. NERC and the Regional Entities also asked stakeholders to fill out an on-line questionnaire to assist NERC and the Regional Entities in completing the three-year assessment.

NERC will post a draft of the three-year assessment for comment on April 27, 2009. That draft includes self-assessments and responses to the survey questions from each of the Regional Entities as well as NERC's draft self-assessment, assessment of the regional entities, and preliminary responses to comments from stakeholders. NERC anticipates holding a workshop on the three-year assessment in mid-May. The deadline for comments on the April 27 draft will be May 29.

NERC has scheduled a board conference call for July 13 to take action on the final draft of the three-year performance assessment.

Amendment to Standards Development Process of Texas Regional Entity

Board Action Required

Approve proposed amendments to the Texas Regional Entity (“Texas RE”) Standards Development Process for filing with the Federal Energy Regulatory Commission.

Information

Texas RE has proposed a number of amendments to its reliability standards development process, most significantly to give the ERCOT ISO a ¼ vote in approval of Regional Reliability Standards within Texas RE. These amendments require NERC and FERC approval before they may take effect. The amended standards development process continues to meet the criteria with respect to Regional standards development procedures set out in Exhibit C of the delegation agreement between NERC and Texas RE. Management recommends approval of the amended Texas RE Standards Development Process and inclusion of the amended process in the NERC/Texas RE delegation agreement, once FERC approves the amendments. NERC posted the proposed amendments, with comments due April 30, 2009. The results of that posting will be provided to the board in advance of the meeting.

Background

On February 20, 2009, NERC received a request from Texas RE to approve a series of amendments to its standards development process, most significantly, to provide the ERCOT ISO with a ¼ vote in the Texas RE Regional standards development process. The Texas RE Reliability Standards Process also requires other minor revisions to promote clarification and consistency of process implementation:

- The Texas RE Board of Directors (not the ERCOT ISO Board of Directors) votes to approve Regional standards or variances;
- The Registered Ballot Pool (which is comprised of interested persons from the Registered Ballot Body who elect to participate) votes on standards (as opposed to the entire Registered Ballot Body voting on standards);
- Both (1) a corporate member with a fee waiver is eligible to participate in the Registered Ballot Body, and (2) the Texas Office of Public Utility Counsel is automatically in the consumer segment and can vote (the latter change is only needed in the Registered Ballot Body procedure — not in the Texas RE Standards Development Process document);
- If ERCOT ISO has a ¼ vote on Registered Ballot Body, (1) ERCOT would also have the right to vote in all Reliability Standards Committee voting, and (2) all quorum requirements (of Delegation Agreement, from FERC requirements) will continue to be met even after the voting change;
- For a quorum on the Reliability Standards Committee, a minimum of one voting member in each of at least six of eight sectors is required. Each sector has one vote and each voting member has an equal fraction of the sector vote. Approval of a standard requires two-thirds affirmative votes.

When Texas RE was first formed and initially drafted its processes, the ERCOT ISO was not authorized to be a member of the Reliability Standards Committee or the Registered Ballot Body and vote on standards actions. SAR-001, Provision to Give ERCOT ISO Vote in the Texas RE Standards Process, was initiated by ERCOT in December 2007, to request a revision to the Texas RE Standards Development Process to include the ERCOT ISO as a voting member of Texas RE's Reliability Standards Committee. ERCOT's request was to obtain a full segment vote on both the Reliability Standards Committee and Registered Ballot Body. Texas RE used its Standards Development Process in order to change the process, as outlined in Appendix B, Section III of the Texas RE Standards Development Process: "Significant changes to this process shall begin with the preparation of a SAR and be addressed using the same procedure as a request to add, modify, or delete an ERCOT-Specific Reliability Standard." The SAR was revised to include other minor clarifying revisions to the process document. The Standards Drafting Team never reached consensus on the weight to assign the ERCOT vote. The Reliability Standards Committee asked that it be posted for a vote with the weight set at ¼. The Registered Ballot Body voted and passed the provision to set the voting weight of the ERCOT ISO at ¼, with 5.8 of 7 segments voting affirmatively for the provision.

The Texas RE Board voted on February 16 to approve the final documents that were revised by the Standards Drafting Team, including a vote weight for ERCOT ISO of ¼, and the ERCOT Board confirmed the vote on February 17, 2009 to approve. The significant issue that was not resolved to ERCOT ISO's satisfaction was the final weight assigned to its segment. ERCOT ISO argued that it should be a full segment vote. Other market participants argued that ERCOT ISO should have only a fraction of a segment, and settled on ¼ as the appropriate fraction. The ERCOT Board directed the ERCOT ISO to file another SAR in the future to request that the segment vote be increased to one full segment.

Attachment 1 to this agenda item is the Texas RE reliability standards process, with the proposed amendments shown in redline.

**Texas Regional Entity
Standards Development Process**

**Appendix to Exhibit C to the
Delegation Agreement
Between NERC and ERCOT**

October 19, 2006

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I. Introduction

This document defines the fair and open process for adoption, approval, revision, reaffirmation, and deletion of an Electric Reliability Council of Texas, Inc. (ERCOT) Regional Reliability Standard (Regional Standard) by the Texas Regional Entity (“Texas RE”), a division of ERCOT. Regional Standards provide for the reliable regional and sub-regional planning and operation of the Bulk Power System (BPS), consistent with Good Utility Practice within a Regional Entity’s (“RE’s”) geographical footprint.

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The process for obtaining an ERCOT Regional Variance to a NERC Reliability Standard shall be the same as the process for obtaining a Regional Standard. Throughout this document, where the term Regional Standard is used, the same process will be applied to a Regional Variance.

Due process is the key to ensuring that Regional Standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in a Regional Standard’s development.

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Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the bulk power system has a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

1 Proposed Regional Standards, shall be subject to approval by NERC, as the electric reliability organization, and by FERC before becoming mandatory and enforceable under Section 215 of the FPA. No Regional Standard shall be effective within the Texas RE area unless filed by NERC with FERC and approved by FERC.

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

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3 Regional Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable bulk power system owners, operators, and users within the Texas RE area, regardless of membership in the region.

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II. Background

The Texas RE may develop, through their own processes, separate Regional Standards that go beyond, add detail to, or implement NERC Reliability Standards; obtain a Regional Variance; or otherwise address issues that are not addressed in NERC Reliability Standards.

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NERC Reliability Standards and Regional Standards are all to be included within the Texas RE's Compliance Program.

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Regional Standards are developed consistent with the following philosophies according to the process defined within this document:

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

The NERC Board of Trustees has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. As these principles are fundamental to reliability and the market interface, these principles provide a constant beacon to guide the development of reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards. Persons and committees that are responsible for the Texas RE Standards Process shall consider these NERC Principles in the execution of those duties.

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NERC Reliability Standards are based on certain reliability principles that define the foundation of reliability for the North American BPS. Each Regional Standard shall enable or support one or more of the reliability principles, thereby ensuring that each Regional Standard serves a purpose in support of reliability of the North American BPS. Each Regional Standard shall also be consistent with all of the reliability principles, thereby ensuring that no Regional Standard undermines reliability through an unintended consequence.

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

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III. Regional Standards Definition

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A NERC Reliability Standard defines certain obligations or requirements of entities that operate, plan, and use the Bulk Power Systems of North America. The obligations or requirements must be material to reliability and measurable. Each obligation and requirement shall support one or more of the stated reliability principles and shall be consistent with all of the stated reliability and market interface principles.

The Texas RE may develop, through its own processes, separate Regional Standards that go beyond, add detail to, or implement NERC Reliability Standards; obtain a Regional Variance; or that cover matters not addressed in NERC Reliability Standards. Regional Criteria may be developed and exist in ERCOT Protocols, Operating Guides, and/or Procedures separately from NERC Reliability Standards, or may be proposed as NERC Reliability Standards. Regional Criteria that exist separately from NERC Reliability Standards shall not be inconsistent with or less stringent than NERC Reliability Standards.

IV. Roles in the Texas Regional Entity (RE) Reliability Standards Development Process

4 Originator – Any person, acting as a representative of an organization which is directly and materially affected by the operation of ERCOT's BPS, is allowed to request a Regional Standard be developed or an existing Regional Standard modified, or deleted, by creating a Regional Standard's Authorization Request (SAR) as described in Appendix B to this document.

Texas RE Board of Directors (Texas RE BOD) – The Texas RE BOD, shall act on any proposed Regional Standard that has gone through the process. Once the Regional Standard is approved by the Federal Energy Regulatory Commission (FERC), compliance with the Regional Standard will be enforced consistent with the terms of the Regional Standard.

6 Registered Ballot Body (RBB) – The Registered Ballot Body is comprised of all entities or individuals that qualify for one of the Texas RE Segments and are registered with the Texas RE as potential ballot participants. This includes the ERCOT Independent System Operator (ERCOT ISO) and all entities or individuals that are part of an ERCOT Market Participant Segment and are current with any ERCOT designated fees or have received a fee waiver.

Ballot Pool - Each Regional Standard has its own ballot pool formed of interested members of the Registered Ballot Body.

Through the voting process, the ballot pool will ensure that the need for and technical merits of a proposed Regional Standard are appropriately considered.

The ballot pool will also ensure that appropriate consideration of views and objections are received during the development process.

Reliability and Operations Subcommittee (ROS) – A balanced subcommittee comprised of the seven (7) ERCOT Market Participant Segments responsible for reviewing events and issues as they may impact ERCOT system reliability and operations. Meetings of the ROS are open to all interested parties. The ERCOT ISO is an active participant in all ROS discussions.

5 Reliability Standards Committee (RSC) – A balanced committee comprised of entities representing the seven (7) ERCOT Market Participant Segments and the ERCOT ISO, that will consider which requests for new or revised Regional Standards shall be assigned for development (or existing Regional Standards considered for deletion). The RSC will also vote to recommend whether proposed new or revised Regional Standards should be presented for a vote to the Registered Ballot Body.

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Reliability Standards Manager (RSM) – A person or persons on the Texas RE staff assigned the task of ensuring that the development, revision or deletion of Regional Standards is in accordance with this document. The RSM works to ensure the integrity of the process and consistency of quality and completeness of the Regional Standards. The RSM manages the Regional Standards Development Process, and coordinates and facilitates all actions contained in all steps in the process.

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Reliability Standards Staff – Employees of the Texas RE that work with or for the Reliability Standards Manager.

Standard Drafting Team (SDT) – A team of technical experts, assigned by the ERCOT Reliability and Operations Subcommittee (ROS), and typically includes a member of the Texas RE staff and the Originator, assigned the task of developing a proposed Regional Standard based upon an approved SAR using the Regional Standard Development Process contained in this document.

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Texas RE Segments – The seven (7) ERCOT Market Participant Segments and the ERCOT ISO.

V. Texas RE Regional Standards Development Process

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A. Assumptions and Prerequisites

The process for developing and approving Standards is generally based on the procedures of the American National Standards Institute (ANSI) and other standards-setting organizations in the United States and Canada. The Regional Standards development process has the following characteristics:

- **Due process** – Any person representing an organization with a direct and material interest has a right to participate by:
 - a) Expressing an opinion and its basis,
 - b) Having that position considered, and
 - c) Appealing any negative decision
- **Openness** – Participation is open to all organizations that are directly and materially affected by ERCOT regions's BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to all interested parties. All proposed SARs and Regional Standards are posted for comment on the Texas RE Website.
- **Balance** – The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any single interest category.

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B. Regional Standards Development Process Steps

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

7 The Texas RE will coordinate with NERC such that the acknowledgement of receipt of a Regional Standard request identified in Step 1, notice of comment posting period identified in Step 4, and notice for vote identified in Step 5 below are concurrently posted on both the Texas RE and NERC websites.

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

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Any entity (Originator) which is directly or materially impacted by the operation of the BPS within the geographical footprint of the Texas RE may request, via a submittal of a Standard Authorization Request (SAR) form, the development, modification, or deletion of a Regional Standard or Regional Variance. The following entities may submit a SAR:

- Any market participant,
- PUCT Staff,
- ERCOT Staff,
- TRE Staff, and
- Any entity that resides (or represents residents) in the ERCOT Region or operates in the ERCOT Region electricity market.

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Any such request shall be submitted to the Texas RE RSM, or his/her designee. The SAR form may be downloaded from the Texas RE Website.

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8 An acceptable SAR contains a description of the proposed Regional Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Regional Standard.

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The RSM will verify that the submitted SAR form has been adequately completed. The RSM may offer the Originator suggestions regarding changes and/or improvements to enhance clarity, the Originator's intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the RSM will electronically acknowledge receipt of the SAR.

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9 The RSM will post all adequately completed SARs for public viewing and possible comment. Within 60 days of receipt of an adequately completed SAR, the RSC shall determine the disposition of the SAR and if needed post for review and comment.

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10 The disposition decision and decision process shall use the normal "business rules and procedures" of the RSC then in effect. The RSC may vote to take one of the following actions:

- Accept the SAR as a candidate for: development of a new Regional Standard, revision of an existing Regional Standard, or deletion of an existing Regional Standard. The RSC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The RSC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.

- Reject the SAR. If the RSC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision.
- Remand the SAR back to the Originator for additional work. The RSM will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the RSC. The Originator may then resubmit the modified SAR using the process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the RSC.

11 Any SAR that is accepted by the RSC for development of a Regional Standard (or modification or deletion of an existing Regional Standard) shall be posted for public viewing on the Texas RE Website and their status will be updated as appropriate.

Any documentation of the deliberations of the RSC concerning SARs shall be made available according to normal "business rules and procedures" of the RSC then in effect.

Texas RE Staff shall submit a written report to the Texas RE BOD on a periodic basis (at least quarterly at regularly scheduled Texas RE BOD Meetings) showing the status of all SARs that have been brought to the RSC for consideration.

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

Upon acceptance by the RSC of a SAR for development of a new Regional Standard (or modification or deletion of an existing Regional Standard), the RSC shall direct the ROS to assemble a qualified balanced slate for the SDT. The RSM will solicit drafting team nominees. The SDT will consist of a group of people who collectively have the necessary technical expertise and work process skills. The RSM will recommend a slate of ad-hoc individuals or a pre-existing task force, work group, or similar for the SDT based upon the ROS' desired team capabilities.

The RSM will ensure that team membership receives all necessary administrative support. This support typically includes a Texas RE staff member and the Originator if he/she chooses to participate. The ROS appoints the SDT interim chair (should not be a Texas RE staff person). The SDT will elect the permanent Chair and Vice-chair at its first meeting.

12 The RSM submits the proposed list of names of the SDT to the ROS. The ROS will either accept the recommendations of the RSM or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development. Upon approval of the SDT slate by the ROS, the RSC will declare a preliminary date on which the SDT is expected to have ready a completed draft Regional Standard and associated supporting documentation available for comments.

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

The RSM will collaborate with the SDT to develop a work plan including the establishment of milestones for completing critical elements. This plan is then delivered to the RSC for its concurrence to ensure that the objectives established by the RSC are met.

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

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

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

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

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

The RSC may, at any time, exercise its authority over the Regional Standards Development Process by directing the SDT to move to Step 4 (below) and post the current work product for comment. If there are competing drafts, the RSC may, at its sole discretion, have posted the version(s) of the draft Regional Standard for comment on the Texas RE Website. The RSC may take this step at any time after a SDT has been commissioned to develop the Regional Standard.

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Step 4 – Comment Posting Period

13 At the direction from the RSC, the RSM then facilitates the posting of the draft Regional Standard on the Texas RE Website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The RSM shall also give notice of the posting to all potentially interested entities inside or outside of the ERCOT region of which Texas RE is aware. The RSM will utilize the typical communication procedures in effect or other means as deemed appropriate.

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Within 30 days of the conclusion of the 30-day comment posting period, the SDT shall convene and consider changes to the draft Regional Standard, the implementation plan, and/or supporting technical documents based upon comments received. The SDT may then elect to

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return to Step 3 to revise the draft Regional Standard, implementation plan, and/or supporting technical documentation.

14The SDT shall prepare a "modification report" summarizing the comments received and the changes made as a result of these comments. The modification report also summarizes comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. Responses to all comments will be posted on the Texas RE Website no later than the next posting.

Step 5 – Posting for Voting by the Registered Ballot Pool

15Upon recommendation of the SDT, and if the RSC concurs that all of the requirements for development of the standard have been met, the RSM shall post the proposed standard and implementation plan for ballot on the Texas RE Website. RSM shall also announce the vote to approve the standard, including when the vote will be conducted and the method for voting. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

16The RSM will schedule a vote among the Registered Ballot Pool, which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting.

The RSM shall send a notice to every entity in the Registered Ballot Body (RBB) to notify them of an opportunity to become a part of the Registered Ballot Pool for this Regional Standard or a Regional Variance. This notice should precede the start of the ballot by at least 30 days. The purpose of this notice is to establish a ballot pool to participate in the consensus development process and ballot the proposed action.

18All members of the Registered Ballot Body are eligible to participate in voting on proposed new Regional Standards, Regional Standard revisions, or Regional Standard deletions. There shall be one person designated as the primary representative of each entity. Those members of the RBB that sign up for the Ballot Pool become that pool.

17The Texas RE Registered Ballot Pool shall be able to vote on the proposed standard during a 15-day period. Votes shall be submitted electronically, or through other means as approved by the RSC.

Voting is an advisory to the Texas RE BOD. The voting results will be composed of only the votes from Registered Ballot Pool members who have responded, within the 15-day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the Texas RE Website prior to going to the RSC or Texas RE BOD.

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19 At least one (1) representative from six (6) of the eight (8) Texas RE Segments must vote to constitute a quorum. Each ERCOT Market Participant Segment shall have one (1) Segment Vote. The representative of each Voting ERCOT Member shall receive an equal fraction of its Segment Vote. The ERCOT ISO shall have 1/4 vote.

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Step 6A – Registered Ballot Pool Voting Receives 2/3 or Greater Affirmative Votes of the Texas RE Segments

If a draft Regional Standard receives 2/3 or greater affirmative votes during the 15-day voting period, the RSC will forward the Regional Standard to the Texas RE BOD for action (Step 7).

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Step 6B – Membership Voting Does Not Receive 2/3 Affirmative Votes of the Texas RE Segments

If a draft Regional Standard does not receive 2/3 or greater affirmative votes during the 15-day voting period, the RSC may:

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- Revise the SAR on which the draft Regional Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Regional Standard and/or implementation plan will be posted for a second voting period. The RSC may require a second comment period prior to a second voting period. The second posting of the draft Regional Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.

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- If a draft Regional Standard receives 2/3 or greater affirmative votes during the second voting period, the RSC will forward to the Texas RE BOD for action (Step 7).

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- If a draft Regional Standard does not receive 2/3 or greater affirmative votes during the second voting period, the RSC will refer the draft Regional Standard and implementation plan to the Texas RE BOD. The RSC may also submit an assessment, opinion, and recommendations to the Texas RE BOD (Step 7).

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- Direct the existing SDT to reconsider or modify certain aspects of the draft Regional Standard and/or implementation plan. The resulting draft Regional Standard and/or implementation plan will be posted for a second voting period. The RSC may require a second comment period prior to the second voting period. The second posting of the draft Regional Standard, implementation plan, and supporting documentation shall be within 60 days of the RSC action.

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- If a draft Regional Standard receives 2/3 or greater affirmative votes on the second voting period, the RSC will forward it to the Texas RE BOD for action (Step 7).

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- If a draft Regional Standard does not receive 2/3 or greater affirmative votes on the second voting period, the RSC will refer the draft Regional Standard and implementation plan to the Texas RE BOD. The RSC may also submit an assessment, opinion, and recommendations to the Texas RE BOD (Step 7).

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- Recommend termination of all work on the development of the Regional Standard action under consideration and so notify the Texas RE BOD.

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Step 7 – Action by the Texas RE Board of Directors

A proposed Regional Standard submitted to the Texas RE BOD for action shall be publicly posted at least 10 days prior to action by the Texas RE BOD. At a regular or special meeting, the Texas RE BOD shall consider adoption of the draft Regional Standard. The Texas RE BOD shall be provided with an “informational package” which includes:

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

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The Texas RE BOD will consider the results of the voting and dissenting opinions. The Texas RE BOD will consider any advice offered by the RSC and may:

- Approve the proposed Regional Standard;
- Remand the proposed Regional Standard to the RSC with comments and instructions; or
- Disapprove the proposed Regional Standard without recourse.

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20 Under no circumstances may the Texas RE BOD substantively modify the proposed Regional Standard.

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21 Once a Regional Standard is approved by the Texas RE BOD, the standard will be submitted to NERC for approval and filing with FERC.

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Step 8 – Implementation of a Regional Standard

Upon approval of a draft Regional Standard by the Texas RE BOD, the RSM will notify the membership of such action of the Texas RE BOD through the normal and customary membership communication procedures and processes then in effect. The RSM will take whatever steps are necessary to have a Regional Standard reviewed and/or approved by NERC or any successor organization.

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C. Regional Standards Integration

Once the Regional Standard is approved by FERC the RSM shall notify the stakeholders of the effective date. The RSM will also notify the Texas RE Compliance Staff for integration into the Texas RE Compliance Program.

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Appendix A – Stakeholder Representation

The Texas RE stakeholder representation for Regional Standards development is as follows:

I. Balanced Decision-Making in Committees

The Reliability Standards Committee (RSC), comprised of representatives from the Texas RE Segments (Independent Generators, Investor-Owned Utilities, Independent Power Marketers, Retail Electric Providers, Municipally-Owned Utilities, Cooperatives, Consumers, and ERCOT ISO), is to provide balanced decision-making and due process for Regional Standards and Regional Variances. The RSC will receive, consider, and vote upon requests for new or revised Regional Standards and Regional Variances.

The RSC will consider any requests for Regional Standards or Regional Variances from parties that are directly and materially affected by the operation of the ERCOT Region Bulk Power System.

II. Texas RE Board of Directors (BOD)

The Texas RE is a division of the Electric Reliability Council of Texas (ERCOT), a Texas non-profit corporation that is the Independent System Operator for the ERCOT Region, and is governed by a combination independent and balanced stakeholder board, as required by Section 39.151 of the Texas Public Utility Regulatory Act (PURA). The Texas RE BOD includes the following individuals:

- Five independent individuals who are unaffiliated with any electric market participant who are each approved by the Texas Public Utility Commission (PUCT) for three-year terms;
- Six electric market participant representatives from each of the following market segments: Independent Generators, Investor-Owned Utilities, Independent Power Marketers, Independent Retail Electric Providers, Municipally-Owned Utilities, and Cooperatives;
- Three Consumer representatives;
- CEO of ERCOT (as ex officio voting Director); and
- Chairman of the PUCT (as ex officio non-voting Director).

Although the Texas RE BOD will have the final vote on proposed Regional Standards and Regional Variances, the Texas RE BOD will not have involvement in Regional Standard compliance and enforcement activities.

III. Registered Ballot Body

A Registered Ballot Body will be comprised of representatives from the Texas RE Segments (Independent Generators, Investor-Owned Utilities, Independent Power Marketers, Retail Electric Providers, Municipally-Owned Utilities, Cooperatives, Consumers, and ERCOT ISO), to provide balanced decision-making on Regional Standards. A Ballot Pool will be formed from the

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Registered Ballot Body. The Ballot Pool will vote on all proposed new or revised Regional Standards.

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Appendix B – Principles, Characteristics, and Special Procedures

I. Principles

Due process is the key to ensuring that regional reliability standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. An open and fair process ensures that all interested and affected parties have an opportunity to participate in the development of a standard.

The Texas RE develops Regional Standards with due consideration of the following principles, in accordance with the steps outlined in this procedure. The process must ensure that any Regional Standard is technically sound and the technical specifications proposed would achieve a valuable reliability objective.

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The standards development process has the following characteristics:

- **22Open** – Participation in the development of a Regional Standard shall be open to all organizations that are directly and materially affected by ERCOT bulk power system reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in ERCOT, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams shall be open to ERCOT members and others.

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- **23Balanced** – The Texas RE Standards Development Process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

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- **24Inclusive** – Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the ERCOT Bulk Power System in the Texas RE area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.

- **25Fair due process** – The Texas RE Standards Development Process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

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- **26Transparent** – All actions material to the development of regional reliability standards shall be transparent. All standards development meetings shall be open and publicly noticed on the regional entity's Web site.

- **27** Does not unnecessarily delay development of the proposed Regional Standard.

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NERC has adopted reliability principles and market interface principles to define the purpose, scope, and nature of reliability standards. These principles are to be used to guide the development of reliability standards, including regional reliability standards. The NERC Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for reliability standards.

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

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

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II. Regional Standard Characteristics and Elements

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a. Characteristics of a Regional Standard

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The following characteristics describe objectives to be considered in the development of Regional Standards:

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1. **Applicability** – Each Regional Standard clearly identifies the functional classes of entities responsible for complying with the standard, with any specific additions or exceptions noted. Such functional classes include: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Interchange Authorities, Transmission Service Providers, Market Operators, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, and Distribution Providers. Each Regional Standard identifies the geographic applicability of the standard. A standard may also identify any limitations on the applicability of the standard based on electric facility characteristics.

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2. **Reliability Objectives** – Each Regional Standard has a clear statement of purpose that describes how the standard contributes to the reliability of the ERCOT bulk power system.

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3. **Requirement or Outcome** – Each Regional Standard states one or more requirements, which if achieved by the applicable entities, will provide for a reliable bulk power system, consistent with good utility practices and the public interest.

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4. **Measurability** – Each performance requirement is stated so as to be objectively measurable by a third party with knowledge or expertise in the area addressed by that requirement. Each performance requirement has one or more associated measures used to objectively evaluate compliance with the requirement. If performance can be practically measured quantitatively, metrics are provided to determine satisfactory performance.

5. **Technical Basis in Engineering and Operations** — Each Regional Standard is based upon sound engineering and operating judgment, analysis, or experience, as determined by expert practitioners in that particular field.

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6. **Completeness** — Each Regional Standard is complete and self-contained. Supporting references may be provided with standards, but they are not part of the standard and do not impose mandatory requirements.

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7. **Clear Language** - Each Regional Standard is stated using clear and unambiguous language. Responsible entities, using reasonable judgment and in keeping with good utility practice, are able to arrive at a consistent understanding of the required performance.

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8. **Practicality** — Each Regional Standard establishes requirements that can be practically implemented by the assigned responsible entities within the specified effective date and thereafter.

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9. **Consistent Terminology** — To the extent possible, Regional Standards use a set of standard terms and definitions that are approved through the regional standards development procedure.

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

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- **Technical standards** are related to the provision, maintenance, operation, or state of electric systems, and will likely contain measures of physical parameters that are technical in nature.
- **Performance standards** are related to the actions of entities providing for or impacting the reliability of the bulk power system, and will likely contain measures of the results of such actions or qualities of performance of such actions.
- **Preparedness standards** are related to the actions of entities to be prepared for conditions that are unlikely to occur, but are nonetheless critical to reliability, and will likely contain measures of such preparations or the state of preparedness.

b. **Elements of a Regional Standard**

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

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

Table 1 – Performance Elements of a Regional Standard

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Identification Number	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference.
Title	A brief, descriptive phrase identifying the topic of the standard.
32 Applicability	Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions. If not applicable to the entire Texas RE area, then a clear identification of the portion of the bulk power system to which the standard applies. Any limitation on the applicability of the standard based on electric facility requirements should be described.
Effective Date and Status	The effective date of the standard or, prior to approval of the standard, the proposed effective date.
Purpose	The purpose of the standard. The purpose shall explicitly state what outcome will be achieved or is expected by this standard.
Requirement(s)	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.
Risk Factor(s)	The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below: A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to bulk power system instability, separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to bulk power system instability, separation, or a cascading sequence of failures, or could place the bulk power system at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to normal condition. A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the bulk power system, or the ability to effectively monitor and control the bulk power

	<p>system, but is unlikely to lead to bulk power system instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to bulk power system instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor and control the bulk power system; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the bulk power system, or the ability to effectively monitor, control, or restore the bulk power system.</p>
33 Measure(s)	<p>Each requirement shall be addressed by one or more measures. Measures are used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measure will identify to whom the measure applies and the expected level of performance or outcomes required demonstrating compliance. Each measure shall be tangible, practical, and as objective as is practical. It is important to realize that measures are proxies to assess required performance or outcomes. Achieving the measure should be a necessary and sufficient indicator that the requirement was met. Each measure shall clearly refer to the requirement(s) to which it applies.</p>

Table 2 – Compliance Elements of a Regional Standard

<p>34 Compliance Monitoring Process</p>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> • The specific data or information that is required to measure performance or outcomes. • The entity that is responsible for providing the data or information for measuring performance or outcomes. • The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes. • The entity that is responsible for evaluating data or information to assess performance or outcomes. • The time period in which performance or outcomes is measured, evaluated, and then reset. • Measurement data retention requirements and assignment of responsibility for data archiving. • Violation severity levels.
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Supporting Information Elements

Interpretation	Any interpretation of regional reliability standard that is developed and approved in accordance with Section VI "Interpretation of <u>Regional Standards</u> " in Appendix B of this procedure, to expound on the application of the standard for unusual or unique situations or to provide clarifications.
Implementation Plan	Each regional reliability standard shall have an associated implementation plan describing the effective date of the standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the standard in the compliance program and other considerations in the initial use of the standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
Supporting References	<p>This section references related documents that support reasons for, or otherwise provide additional information related to the regional reliability standard. Examples include, but are not limited to:</p> <ul style="list-style-type: none"> • Glossary of terms • Developmental history of the standard and prior versions • Notes pertaining to implementation or compliance • <u>Regional Standard</u> references • <u>Regional Standard</u> supplements • Procedures • Practices • Training references • Technical references • White papers • Internet links to related information

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III. Maintenance of the Texas RE Reliability Standards Development Process

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

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The RSC has the authority to make 'minor' changes to this process as deemed appropriate by the RSC and subject to the RSC voting practices and procedures then in effect. The Reliability Standards Manager, on behalf of the RSC, shall promptly notify the Texas RE BOD of such 'minor' changes to this process for their review and concurrence at the next Texas RE BOD meeting.

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IV. Maintenance of Regional Standards

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The RSM shall ensure that each Regional Standard is reviewed at least once every five years from the effective date of the Standard or the latest revision to the Regional Standard.

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whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the RSM shall recommend to the Texas RE BOD that the Regional Standard be reaffirmed. If the review indicates a need to revise or delete a Regional Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this process.

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V. Urgent Action

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

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An originator prepares a SAR and a draft of the proposed standard and submits both to the Reliability Standards Manager. The standard request must include a justification for urgent action. The Reliability Standards Manager submits the request to the RSC for its consideration. If the RSC designates the requested standard or revision as an urgent action item, then the Reliability Standards Manager shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 6.

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Any Regional Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the standard permanent the standard would be required to go through the full Regional Standard Development Process. All urgent action standards require Texas RE BOD, NERC, and FERC approval, as outlined for standards in the regular process.

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

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Any person or entity, including the drafting team working on a permanent replacement standard, may at any time submit a standard request proposing that an urgent action standard become a permanent standard by following the full standards process.

VI. Interpretations of Regional Standards

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

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The RSM will assemble a team with the relevant expertise to address the clarification. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The RSM submits the proposed list of names of the IDT to the ROS. The ROS will either accept the recommendations of the RSM or modify the IDT slate.

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As soon as practical (not more than 45 days), the team will draft a written interpretation to the Regional Standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Regional Standard addressing only the issues raised, the team will forward the draft interpretation to the RSM. The RSM will forward the draft interpretation to the Texas RE Chief Compliance Officer. The Chief Compliance Officer is to assess if the inclusion of the interpretation lessens the measurability of the Regional Standard. In addition the RSM will forward the interpretation to the ROS. Barring receipt of an opinion from either the Chief Compliance Officer or ROS within 21 days, that the interpretation lessens measurability or is not technically appropriate for the Regional Standard, respectively, the RSM will forward the interpretation to the RSC. The RSC will determine if the interpretation is consistent with the Regional Standard. The RSM, on behalf of the RSC, will forward the interpretation to the Texas RE BOD for informational purposes as being appended to the approved Regional Standard.

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Note: In the event that the Chief Compliance Officer determines that measurability is lessened, the Chief Compliance Officer shall provide an explanation of his/her reasoning to the RSM and IDT for inclusion in a subsequent reversion. The ROS shall in a similar manner provide an explanation of its reasoning if it determines that the interpretation makes the standard technically inappropriate. In either case, the IDT and RSM will continue to re-circulate the interpretation as stated above.

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

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VII. Appeals

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

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The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals

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for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

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

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

Level 1 Appeal

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

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Level 2 Appeal

If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the Reliability Standards Manager, the Reliability Standards Manager shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by ERCOT's BOD. In all cases, Level 2 Appeals Panel Members shall have no direct affiliation with the participants in the appeal.

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

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

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Appendix C – Sample Regional Standard Request Form

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Regional Standard Authorization Request

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The tables below provide a representative example of information in a Regional Standard Authorization Request. The RSM shall be responsible for implementing and maintaining the applicable form as needed to support the information requirements of the Texas RE Standards Process. The latest version of the form will be downloadable from the Texas RE's Standards Development Web page.

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Texas RE Standard Authorization Request Form

Texas RE to complete

ID
Authorized for Posting
Authorized for Development

Title of Proposed Regional Standard:

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Request Date:

SAR Originator Information

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Name:	SAR Type (Check one box.)	
Company:	<input type="checkbox"/>	New <u>Regional Standard</u>
Telephone:	<input type="checkbox"/>	Revision to Existing <u>Regional Standard</u>
Fax:	<input type="checkbox"/>	Withdrawal of Existing <u>Regional Standard</u>
Email:	<input type="checkbox"/>	Urgent Action

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Purpose (Describe the purpose of the proposed regional reliability standard – what the standard will achieve in support of reliability.)

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

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

Reliability Functions

The **Regional Standard** will Apply to the Following Functions (Check all applicable boxes.)

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<input type="checkbox"/>	Reliability Coordinator	The entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.
<input type="checkbox"/>	Balancing Authority	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
<input type="checkbox"/>	Interchange Authority	Authorizes valid and balanced Interchange Schedules.
<input type="checkbox"/>	Planning Authority	The responsible entity that coordinates and integrates transmission facility and service plans, resource plans, and protection systems.
<input type="checkbox"/>	Transmission Service Provider	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.
<input type="checkbox"/>	Transmission Owner	The entity that owns and maintains transmission facilities.
<input type="checkbox"/>	Transmission Operator	The entity responsible for the reliability of its "local" transmission system, and that operates or directs the operations of the transmission facilities.
<input type="checkbox"/>	Transmission Planner	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area.
<input type="checkbox"/>	Resource Planner	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area.

<input type="checkbox"/>	Generator Operator	The entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.
<input type="checkbox"/>	Generator Owner	Entity that owns and maintains generating units.
<input type="checkbox"/>	Purchasing-Selling Entity	The entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.
<input type="checkbox"/>	Distribution Provider	Provides and operates the "wires" between the transmission system and the customer.
<input type="checkbox"/>	Load-Serving Entity	Secures energy and transmission service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.

Reliability and Market Interface Principles

Applicable Reliability Principles (Check all boxes that apply.)

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

Does the proposed Regional Standard comply with all of the following Market Interface Principles? (Select 'yes' or 'no' from the drop-down box.)

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Recognizing that reliability is an Common Attribute of a robust North American economy:

1. A reliability standard shall not give any market participant an unfair competitive advantage. Yes
2. A reliability standard shall neither mandate nor prohibit any specific market structure. Yes
3. A reliability standard shall not preclude market solutions to achieving compliance with that standard. Yes
4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards. Yes

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

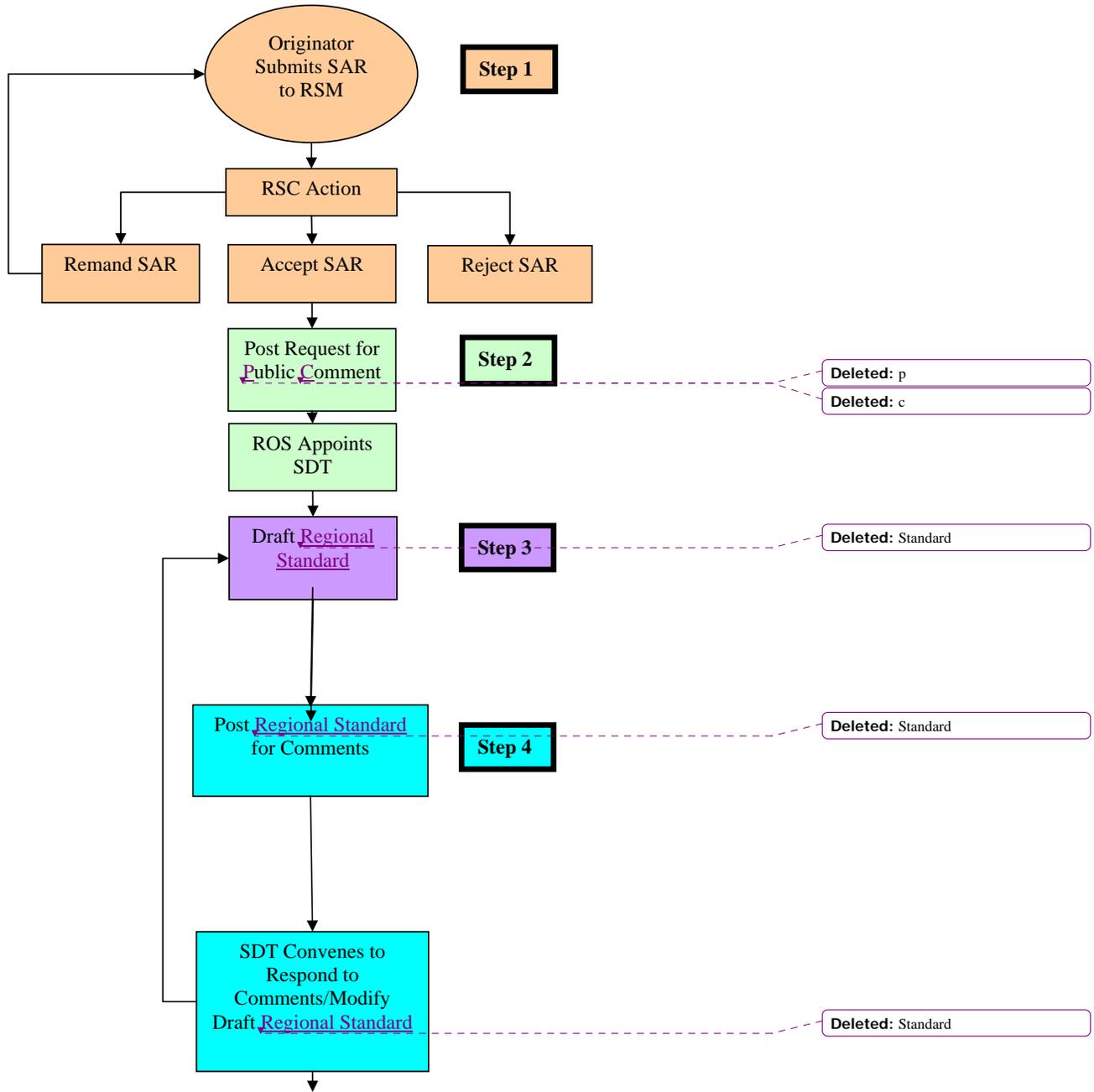
Related Standards

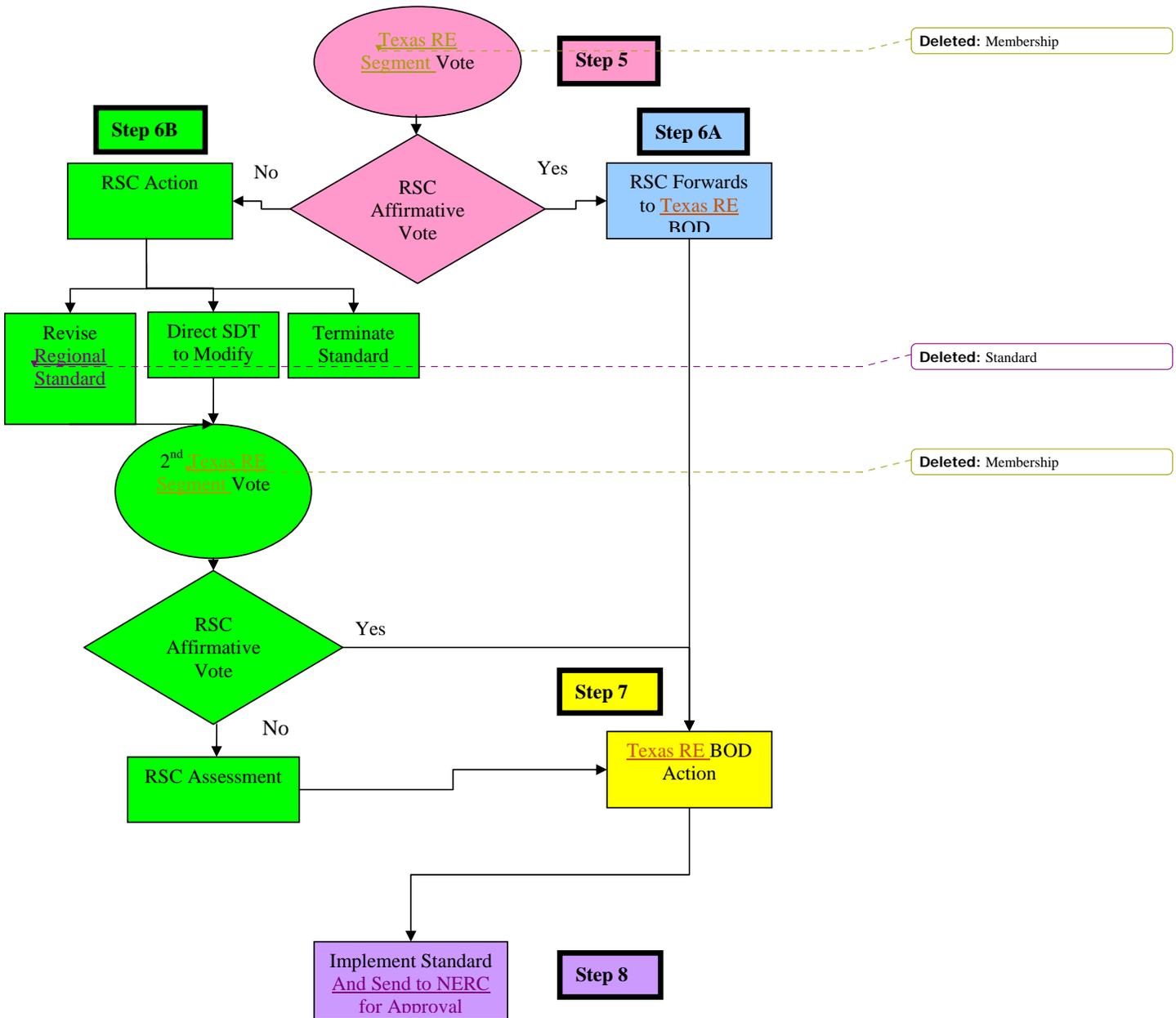
Standard No.	Explanation

Related SARs

SAR ID	Explanation

Appendix D – Process Flow Diagram





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The ballot pool will ensure, through its vote, the need for and technical merits of a proposed standard action and the appropriate consideration of views and objections		
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received during the development process. The ballot pool votes to approve each standards action.		
Page 5: [3] Deleted	ftafreshi	6/16/2008 11:28:00 AM
Each standard action has its own ballot pool formed of interested members of the registered ballot body.		
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; however, it does not have a vote		
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all ERCOT Market Participants		
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of the work in sufficient detail to ensure that the SDT will meet the date objective established by the RSC or the SDT shall propose an alternative date.		
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drafting team		
Page 10: [7] Deleted	ftafreshi	6/17/2008 2:32:00 PM
eliability Standards Manager		
Page 10: [7] Deleted	ftafreshi	6/17/2008 2:35:00 PM
and		
Page 10: [8] Deleted	ftafreshi	6/17/2008 2:33:00 PM
eliability Standards Manager		
Page 10: [8] Deleted	ftafreshi	6/17/2008 2:33:00 PM
V		
Page 10: [9] Deleted	DAM Subgroup	7/30/2008 1:25:00 PM
by		
Page 10: [9] Deleted	DAM Subgroup	7/30/2008 1:25:00 PM
Body		
Page 10: [10] Deleted	DAM Subgroup	7/30/2008 1:20:00 PM
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establish a ballot pool for a		
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to a NERC Reliability Standard		
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action at least 30 days prior to the start of a ballot.		
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The purpose of this notice is to establish a ballot pool to participate in the consensus development process and ballot the proposed action. The ballot pool may be established earlier in the development process to encourage active participation in the development process.		
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Pool shall be allowed to vote over a period of 15 days. It is expected that votes will be submitted electronically, but may be submitted through other means as approved by the RSC. All

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Voting Entities as defined in Appendix A are eligible to participate in voting on proposed new

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Regional Standard revisions, or

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Regional Standard deletions. Each member company shall have one vote. ERCOT ISO shall have X vote. The contact designated as primary representative to the Texas RE is the voting member with the secondary contact as the backup.

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ERCOT Members

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Registered Ballot Pool Voting Receives

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2/3 or Greater Affirmative Votes of the Texas RE Segments

17 The Texas RE

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Body shall be able to vote on the proposed standard during a 15-day period.

Votes shall be submitted electronically, or through other means as approved by the RSC.

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the Registered Ballot Body are eligible to participate in voting on proposed new Regional

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Standard revisions, or Regional

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Standard deletions. There shall be one person designated as the primary representative of each entity.

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At all meetings, each ERCOT Market Participant Segment shall have one (1) Segment vote. The representative of each Voting ERCOT Member shall receive an equal fraction of its Segment vote. The ERCOT ISO shall have X vote.

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. The representative of each ERCOT Market Participant Segment Voting Entity, present at the meeting and participating in the vote, shall receive an equal fraction of its Segment's Vote, except for the Consumer Segment which shall be divided into three sub-segments

(Residential, Commercial, and Industrial) that receive one third of the Consumer Segment Vote. For the Consumer Segment, if no representative from a sub-segment is present at a meeting, such sub-segment's fractional vote is allocated equally to the sub-segment(s) that are present. If a representative from a sub-segment abstains from a vote, the fraction of the Consumer Segment Vote allocated to such representative is not included in the vote tally.

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Entities entitled to vote (Voting Entities) are ERCOT Corporate Members, ERCOT Associate Members, and ERCOT Adjunct Members. Voting Entities must align themselves each calendar year with a Segment for which they qualify or, for Adjunct Members, a Segment to which they are similar. Voting Entities that align themselves with a Segment must be aligned with that same Segment for all ERCOT subcommittees, and remain aligned with that Segment for the entire calendar year. For the Residential sub-segment of the Consumer Segment, Voting Entities are limited to the Standing Representative or their designated Alternate Representative. Only one representative of each Voting Entity present at the meeting may vote. In the event that a representative of a Voting Entity abstains from a vote, the Segment Vote is allocated among the members casting a vote; except for the Consumer Segment.

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For e-mail votes, a representative of each Voting Entity shall have one (1) vote. Each Segment shall have one (1) Segment Vote and participation requires casting a vote or abstaining.

Amendments to Operating Reliability Data Agreement

Action

Approve proposed amendments to Operating Reliability Data Agreement, Version 3, and related transition plan.

Attachments

North American Electric Reliability Corporation Confidentiality Agreement for Electric System Operating Reliability Data (Redline)

Background

The Operating Reliability Data Agreement (“ORD Agreement”) is the basic mutual confidentiality agreement under which Reliability Coordinators, Transmission Operators, and Balancing Authorities exchange real-time operating data for the bulk power system (BPS). The ORD Agreement permits access to such information on a need-to-know basis. Real-time operating data may not generally be disclosed to those engaged in market activities unless the information is disclosed in a non-discriminatory way. Real-time operating data is also considered critical energy infrastructure information and protected as such.

SAFNR Project

The Reliability Coordinators, NERC, the Regional Entities, and FERC staff have developed a situational awareness and visualization project (Situational Awareness for FERC, NERC, and the Regional Entities, or SAFNR) that would make use of a subset of operating reliability data and create a common set of displays about the near-real time status of the BPS that FERC, NERC, the Regional Entities, and the Reliability Coordinators would be looking at. The project should improve understanding and communication about the status of the BPS among all the entities involved. The project is expected to begin June 1, 2009.

To facilitate implementation of the project, it is necessary to amend the ORD Agreement to permit disclosure of the necessary subset of operating reliability data (defined as “Situational Awareness Information”) to FERC. The proposed amendments define an “Eligible Governmental Authority” as a U.S. Federal agency or department that (i) has jurisdiction over a portion of the BPS, (ii) requests access to the Situational Awareness Information, and (iii) agrees to treat that information as confidential or critical energy infrastructure information. The amendments are U.S.-focused, because FERC is requesting only U.S. information, and no Canadian authority has indicated an interest in having access to such information. The principal amendment to the ORD Agreement is to authorize disclosure of Situational Awareness Information to an Eligible Governmental Authority.

We have taken the occasion of the SAFNR Project amendments to make other technical improvements to the ORD Agreement. Conforming changes to Annex 1 and Annex 2 to the ORD Agreement are also included.

Transition Period

There are in excess of 150 signatories to the ORD Agreement, so a transition period will be necessary to move from the current version of the agreement to the amended one. NERC last amended the ORD Agreement in August 2005, and the 2005 transition plan had these elements:

1. NERC signed the new ORD Agreement the day after board approval;
2. After board approval, no new entities were eligible to sign the current agreement;
3. The validity of the then-current agreement was originally to end 90 days after board approval;
4. During the 90-day period, both agreements were in force;
5. NERC worked to get all signatories on new agreement as promptly as possible after board approval;
6. NERC needed to extend the effectiveness of the old agreement for a few additional months to get all signatories to sign the new agreement.

For the 2009 transition, management recommends the following elements:

1. NERC will sign the ORD Agreement, Version 3, promptly after board approval;
2. ORD Agreement, Version 3, will become effective as to each entity at the time the entity signs ORD Agreement, Version 3;
3. After board approval, new entities or signatories will only be eligible to sign ORD Agreement, Version 3;
4. The existing ORD Agreement shall remain in effect for a period of 120 days to provide a transition period, except that the existing agreement shall remain in effect beyond the 120-day for NPCC and entities within NPCC;
5. During the 120-day period, both agreements shall be in force;
6. The Regional Entities are requested to assist NERC in getting signatories to sign Version 3 of the ORD Agreement as promptly as possible;
7. The NERC CEO shall have the authority to extend the effective date of the existing ORD Agreement, either generally or for particular entities, as he judges appropriate.

Continuing the effectiveness of the existing ORD Agreement for NPCC and entities within NPCC is occasioned because the NPCC entities will be making Situational Awareness Information available under a different set of agreements than the remaining reliability coordinators. This different treatment is necessitated by current restrictions on the extent to which information from Canada is made available to those outside Canada.

North American Electric Reliability Corporation
Confidentiality Agreement for Electric System Operating
Reliability Data
DRAFT Version 3

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1.0 Parties to this Agreement.

This Operating Reliability Data Confidentiality Agreement (“ORD Agreement”) is an agreement among the signatories to this document and to the annexes to this document, and between each of the signatories and the North American Electric Reliability Corporation (“NERC”) (collectively, “Parties”).

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2.0 Background.

To maintain the reliable operation of the bulk power system, NERC Reliability Standards require that specific information regarding operating conditions on the bulk power system (referred to in this ORD Agreement as “Operating Reliability Data”) be made available to Balancing Authorities, Transmission Operators, Reliability Coordinators, other entities responsible for real-time operating reliability, and to NERC. Because Operating Reliability Data may contain proprietary information and because unequal access to Operating Reliability Data may result in unfair advantages and disadvantages in the electricity markets, the availability and confidentiality of this data must be protected in order to ensure that it is available only to those responsible for maintaining bulk power system operating reliability, and not made available in a preferential or discriminatory manner to entities engaged in Merchant Functions. The increased responsibility of NERC, the Regional Entities, and the Federal Energy Regulatory Commission for overseeing reliability matters means those organizations have a need for sufficient access to a subset of Operating Reliability Data related to the United States portion of the bulk power system to enable those organizations to view near real-time monitoring displays of the Reliability Coordinators and specified core data related thereto (such subset referred to in this ORD Agreement as “Situational Awareness Information”).

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3.0 Definitions.

3.1 **In General.** Terms used in this ORD Agreement have the definitions contained in the NERC Glossary of Terms Used in Reliability Standards and in the NERC Rules of Procedure, as amended from time to time, unless otherwise stated.

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3.2 **Disclosing Party.** A signatory to this ORD Agreement that supplies Operating Reliability Data, either manually or automatically, to its Reliability Coordinator, other Reliability Coordinators, or other entities that are directly responsible for the immediate, real-time operations of the bulk power system, and to NERC and Regional Entities. The term includes NERC and Regional Entities.

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3.3 **Eligible Governmental Authority.** An agency or department of the U.S. federal government having jurisdiction over a portion of the bulk power system that (i) requests access to Situational Awareness Information, (ii) has the capability to protect Situational Awareness Information as confidential information or critical energy infrastructure information, and (iii) agrees to protect such Situational Awareness Information as confidential information or critical energy infrastructure information.

3.4 **Merchant Employee.** Within an organization, any employee who engages in Merchant Functions.

3.5 **Merchant Function.** The purchase or sale, at either wholesale or retail, of electric energy or capacity.

3.6 **Nuclear Generating Plant.** The control center for a particular nuclear generating plant that has need for real-time information regarding the status of the transmission system with which it is interconnected.

3.7 **Operating Reliability Data.** All system control information and metered data shared between operating entities that are signatories to this ORD Agreement. Such information and data currently include, but are not limited to voltages, line flows, interchange schedules, e-tags, load projections, planned generation and transmission outages, breaker status, and phasor measurements, regardless of the periodicity of the data being metered or exchanged. Computer applications and data exchange systems that carry Operating Reliability Data include, but are not

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**[Approved by NERC Board of Trustees]
[to be approved]**

limited to, ICCP, the Interregional Security Network, the Reliability Coordinator Information System, the Interchange Distribution Calculator, the System Data Exchange, ACE/Frequency Monitoring tools, phasor data concentrators, and real-time phasor displays.

3.8 **Recipient Party.** A signatory to this ORD Agreement that (i) is directly responsible for the immediate, real-time operations of the bulk power system, or (ii) uses Operating Reliability Data for analyzing system performance, standards compliance, and producing value-added information for use by operating entities, and that receives Operating Reliability Data, directly from a Disclosing Party or by means of data-sharing systems maintained by NERC. The term includes NERC and Regional Entities.

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3.9 **Small Bundled Entity.** An entity that has not unbundled its Merchant Function and meets the requirements established by the Federal Energy Regulatory Commission in Order No. 888 for an exemption from the requirement to unbundle its Merchant Function from its transmission functions.

4.0 Limitations on Exchange of Data.

4.1 Except as otherwise provided in this ORD Agreement, Operating Reliability Data will be available only to those entities who are both (i) directly responsible for immediate real-time operating reliability of a portion of the bulk power system or otherwise have a need for access to data concerning immediate, real-time operations of the bulk power system (including NERC and Regional Entities), and (ii) signatories to this ORD Agreement.

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4.2 Operating Reliability Data that is made available to all market participants in a fair and non-discriminatory manner through the NERC web site or by means of tools (e.g., the Flow Impact Study Tool) that are available on reasonable terms and conditions to all market participants shall not be covered by this ORD Agreement.

4.3 Nothing in this ORD Agreement restricts in any way a Party's right or ability to make its own information and data that otherwise falls within the definition of

Deleted: <#>Operating Reliability Data eight days or older is exempt from the access and disclosure restrictions of this ORD Agreement. Forecast Operating Reliability Data is exempt from the access and disclosure restrictions of this ORD Agreement beginning eight days after the forecast period has passed.¶

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**[Approved by NERC Board of Trustees]
[to be approved]**

Operating Reliability Data available to third parties on such terms and conditions as that Party, in its sole discretion, deems appropriate.

4.4 Disclosing Parties agree to the following disclosures by the Recipient Parties:

4.4.1 Recipient Parties may disclose Operating Reliability Data to employees, agents, consultants or attorneys (“Representatives”) who have a need to know for the purposes of analyzing or maintaining bulk power system operating reliability at the Recipient Party’s initiative. However, prior to providing Operating Reliability Data to such Representatives, the Recipient Party shall ensure that such Representatives (i) are aware of the confidentiality obligations surrounding the Operating Reliability Data, and (ii) are under obligations of confidentiality to the Recipient Party that are at least as restrictive as those contained herein. The Recipient Party shall be responsible for any breach of this ORD Agreement by any of its Representatives.

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4.4.2 The Parties recognize that the Recipient Parties may employ or otherwise engage third-party information technology individuals (“Third-Party IT Providers”) who may have access to the Operating Reliability Data in the normal course of their development, general maintenance, and support service activities to the Recipient Party. Such access for the limited purposes of performing development, maintenance, and support service activities is acceptable to the Parties, provided that such Third-Party IT Providers are under obligations of confidentiality to the Recipient Party that are at least as restrictive as those contained herein. The Recipient Party shall be responsible for any breach of this ORD Agreement by any of its Third-Party IT Providers.

4.4.3 A Recipient Party may disclose U.S. Situational Awareness Information to an Eligible Governmental Authority.

5.0 Conditions for Access to Data.

As a condition to obtaining access to Operating Reliability Data, each Recipient Party agrees to the following requirements:

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[Approved by NERC Board of Trustees]
[to be approved]

- 5.1 No Merchant Employee of the Recipient Party or its affiliate shall have access to the Operating Reliability Data received from other entities.
- 5.2 Employees of the Recipient Party or employees of an affiliate who are engaged in transmission system operation reliability functions shall not disclose to Merchant Employees of the Recipient Party or its affiliate any Operating Reliability Data received from other entities, except as compelled by law or judicial or regulatory order or directive.
- 5.3 The Recipient Party shall not, even under conditions of confidentiality, make available, disclose, provide, or communicate any Operating Reliability Data to any other entity or person who is not a signatory to this ORD Agreement except as (i) compelled by law or judicial or regulatory order or directive or (ii) permitted by this ORD Agreement.
- 5.4 The Recipient Party will exercise all reasonable efforts against the compelled disclosure of Operating Reliability Data to any party who is not a signatory to this ORD Agreement. In the event disclosure of Operating Reliability Data is sought from a Recipient Party by judicial or regulatory order or directive, the Recipient Party shall provide immediate notice to all Disclosing Parties from which Recipient Party received Operating Reliability Data and furnish all reasonable assistance requested by those Parties in protecting the confidential nature of the Operating Reliability Data for which disclosure is sought.
- 5.5 The Recipient Party will educate its employees, and employees of an affiliate engaged in transmission system operations, in the provisions of this ORD Agreement and, upon request, provide any information to NERC necessary to determine compliance with the terms and conditions of this ORD Agreement, including confidentiality agreements that include the provisions of this ORD Agreement.
- 5.6 Notwithstanding any other provision of this ORD Agreement, a Disclosing Party may disclose to a Small Bundled Entity Operating Reliability Data pertaining to the real-time operation of the Small Bundled Entity's own system if the Small Bundled Entity, the Disclosing Party, and NERC have executed the Limited

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Operating Reliability Data Agreement contained in Annex 1 to this ORD Agreement. NERC shall not execute the Limited Operating Reliability Data Agreement without the concurrence of the Small Bundled Entity's Reliability Coordinator. The Small Bundled Entity shall not be eligible to receive wide-area market-sensitive, real-time data under this provision.

- 5.7 Notwithstanding any other provision of this ORD Agreement, a Disclosing Party may disclose to a Nuclear Generating Plant, certain Operating Reliability Data pertaining to the real-time operation of the transmission system interconnected with the Nuclear Generating Plant if the Nuclear Generating Plant, the Disclosing Party, and NERC have executed the Nuclear Plant Operating Reliability Data Agreement contained in Annex 2 to this ORD Agreement. The Nuclear Generating Plant shall not be eligible to receive wide-area market-sensitive, real-time data under this provision.

6.0 Emergencies.

Notwithstanding any other provisions herein, in emergency circumstances that could jeopardize operating reliability, a Recipient Party may take whatever steps are necessary to maintain system operating reliability. The Recipient Party must report to its Reliability Coordinator each emergency that resulted in any deviation from this ORD Agreement within 24 hours of such deviation.

7.0 Disclaimer and Hold Harmless.

- 7.1 Each Recipient Party assumes any and all risk and responsibility for selection and use of, and reliance on, any Operating Reliability Data.
- 7.2 Each Recipient Party acknowledges and agrees that the Disclosing Party generates and gathers Operating Reliability Data to meet the Disclosing Party's sole needs and responsibilities. Each Recipient Party receives any and all Operating Reliability Data "as is" and with all faults, errors, defects, inaccuracies, and omissions. No Disclosing Party makes any representations or warranties whatsoever with respect to the availability, timeliness, accuracy, reliability, or suitability of any Operating Reliability Data pursuant to this ORD Agreement.

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[Approved by NERC Board of Trustees]
[to be approved]

Each Recipient Party disclaims and waives all rights and remedies that it may otherwise have with respect to all warranties and liabilities of each Disclosing Party, expressed or implied, arising by law or otherwise, with respect to any faults, errors, defects, inaccuracies or omissions in, or availability, timeliness, reliability or suitability of the Operating Reliability Data. Each Recipient Party assumes any and all risk and responsibility for selection and use of, and reliance on, any Operating Reliability Data. By entering into this ORD Agreement, each Disclosing Party does not hold itself out to provide like or similar service to any other entity.

- 7.3 Each Recipient Party acknowledges and agrees that NERC maintains various data sharing systems to facilitate maintenance of operating reliability by the Reliability Coordinators and other entities with responsibility for the operating reliability of the bulk power system, and that the supply and use of data in accordance with this ORD Agreement is the responsibility of the individual Recipient Parties and Disclosing Parties and not of NERC. NERC makes no representations or warranties whatsoever with respect to the availability, timeliness, accuracy, reliability, or suitability of any Operating Reliability Data provided pursuant to this ORD Agreement. Each Disclosing Party and Recipient Party disclaims and waives any rights or remedies that it might otherwise have against NERC for faults, errors, defects, inaccuracies, or omissions in, or availability, timeliness, accuracy, reliability or suitability of the Operating Reliability Data. Further, each Disclosing Party and Recipient Party disclaims and waives any rights or remedies that it might otherwise have against NERC for the neglect, wrongful, or unauthorized use or disclosure of the Operating Reliability Data by any Disclosing Party or Recipient Party.

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8.0 Term and Termination.

- 8.1 The term of this ORD Agreement shall commence immediately upon the signatures of an officer of a Party and an officer of NERC and shall remain in effect until terminated.

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[to be approved]

8.2 Any Party wishing to terminate this ORD Agreement as to that Party shall notify NERC in writing of its desire to terminate this ORD Agreement. Termination shall be effective 30 days following acknowledgment of receipt of such written notice. Upon such termination that Party will be prohibited from further receipt of Operating Reliability Data.

8.2.1 Termination does not excuse the Party from supplying Operating Reliability Data if required by NERC Reliability Standards.

8.2.2 Termination does not excuse the Recipient Party from holding confidential any Operating Reliability Data it has received prior to the effective date of its termination.

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9.0 Laws and Regulations.

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This ORD Agreement is subject to the laws, rules, regulations, orders and other requirements, now or hereafter in effect, of all regulatory authorities having jurisdiction over the Operating Reliability Data, this ORD Agreement, the Disclosing Parties, and Recipient Parties. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this ORD Agreement.

10.0 Non-Compliance.

A Party found not to be in compliance with this ORD Agreement by NERC or any other Party will be prohibited from further receipt of the Operating Reliability Data until NERC determines that the Party has resumed compliance with this ORD Agreement. Non-compliance does not excuse the Party from supplying Operating Reliability Data if required by NERC Reliability Standards, nor does it excuse the Party from holding confidential any Operating Reliability Data it has received prior to the non-compliance.

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11.0 Due Diligence.

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All signatories to this ORD Agreement shall use due diligence to protect the various data-sharing systems maintained by NERC and Operating Reliability Data from improper access.

12.0 Disputes.

12.1 Disputes arising over issues regarding this ORD Agreement will be ~~resolved in the first instance through consultation of senior officials of the Parties involved, and thereafter~~ in accordance with the dispute resolution procedures of the Party's Regional ~~Entity~~.

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12.2 The Parties acknowledge that Operating Reliability Data is proprietary, confidential or market sensitive and that disclosure of a Disclosing Party's Operating Reliability Data in breach of this ORD Agreement will result in irreparable harm and that monetary damages would not be an adequate remedy. Therefore the Parties agree that in the event of a breach or threatened breach of confidentiality, a Disclosing Party shall be entitled to injunctive relief in addition to any other legal remedies that may be available for any such breach or anticipated breach, without the necessity of posting a bond.

13.0 Governing Law.

This ORD Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of New Jersey, without reference to rules governing conflicts of law, except to the extent such laws may be preempted by the laws of the United States of America, Canada, or Mexico, as applicable.

14.0 Integration.

This ORD Agreement constitutes the entire agreement of the Parties with regard to Operating Reliability Data exchanged between them. This ORD Agreement may be signed in multiple originals.

PARTY:

By: _____

Name:

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[Approved by NERC Board of Trustees]
[to be approved]

Title:

Date:

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

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By: _____

Name: _____

Title: _____

Date: _____

[Approved by NERC Board of Trustees]
[to be approved]

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Annex 1 to North American Electric Reliability Corporation Confidentiality Agreement for Electric System Operating Reliability Data

Limited Operating Reliability Data Agreement for Small Bundled Entities

1.0 Parties.

This Limited Operating Reliability Data Agreement (“Limited Data Agreement”) is entered into by the North American Electric Reliability Corporation (“NERC”), [INSERT NAME OF DISCLOSING PARTY], a disclosing party under the NERC Confidentiality Agreement for Electric System Operating Reliability Data, Version 3 (“ORD Agreement”), and [INSERT NAME OF SMALL BUNDLED ENTITY], a Small Bundled Entity as defined in the ORD Agreement.

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2.0 Purpose.

The purpose of this Limited Data Agreement is to permit an entity that (i) has not functionally separated its transmission and merchant functions and (ii) meets the requirements established by the Federal Energy Regulatory Commission in Order No. 888 for an exemption from the requirement to unbundle its merchant function from its transmission functions to have access to operating reliability data pertaining to the real-time operation of the Small Bundled Entity's own system without the Small Bundled Entity's having to meet all the requirements of the ORD Agreement.

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3.0 Scope and Exceptions.

3.1 All provisions of the ORD Agreement are incorporated herein by reference as if fully set forth and shall apply to the Small Bundled Entity except those provisions identified in paragraph 3.2 of this Limited Data Agreement.

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3.2 The following paragraphs of the ORD Agreement shall NOT apply to the Small Bundled Entity:

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- (i) Paragraph 4.1: Except as otherwise provided in this ORD Agreement, operating reliability data will be available only to those entities that are both (i) directly responsible for immediate real-time operating reliability of a portion of the bulk electric system or otherwise have a need for access to data concerning immediate, real-time operations of the bulk electric system (including NERC), and (ii) signatories to this ORD Agreement.
- (ii) Paragraph 5.1: No merchant employee of the recipient party or its affiliate shall have access to the operating reliability data received from other entities.
- (iii) Paragraph 5.2: Employees of the recipient party or employees of an affiliate who are engaged in transmission system operation reliability functions shall not disclose to merchant employees of the recipient party or its affiliate any

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operating reliability data received from other entities, except as compelled by law or judicial or regulatory order or directive.

4.0 Conditions of Access.

4.1 As a condition to being granted access to operating reliability data under this Limited Data Agreement, the Small Bundled Entity agrees as follows:

4.1.1 The Small Bundled Entity shall use the operating reliability data it receives under this Limited Data Agreement only for the purpose of the real-time operation of its own system and not for any commercial purpose; and

4.1.2 The Small Bundled Entity shall not disclose operating reliability data received under this Limited Data Agreement to any other person except as provided for in Paragraph 5.3 of the ORD Agreement.

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5.0 No Obligation to Disclose.

5.1 This Limited Data Agreement does not create any obligation on the part of NERC or the disclosing party to disclose operating reliability data to the Small Bundled Entity.

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SMALL BUNDLED ENTITY:

By: _____

Name: _____

Title: _____

Date: _____

DISCLOSING PARTY:

By: _____

Name: _____

Title: _____

Date: _____

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

Annex 2 to North American Electric Reliability Corporation Confidentiality Agreement for Electric System Operating Reliability Data

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Nuclear Plant Operating Reliability Data Agreement

1.0 Parties.

This Nuclear Plant Operating Reliability Data Agreement (“Nuclear Plant Data Agreement”) is entered into by the North American Electric Reliability Corporation (“NERC”), [INSERT NAME OF DISCLOSING PARTY], a disclosing party under the NERC Confidentiality Agreement for Electric System Operating Reliability Data, Version 3 (“ORD Agreement”), and [INSERT NAME OF NUCLEAR GENERATING PLANT], a nuclear generating plant as defined in the ORD Agreement.

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2.0 Purpose.

Nuclear generating plants must meet more stringent requirements than do other generating plants. The purpose of this Nuclear Plant Data Agreement is to permit an entity that operates a nuclear generating plant to have access to operating reliability data pertaining to the real-time status of the transmission system to which it is connected to enable the nuclear generating plant to meet regulatory requirements regarding monitoring grid conditions to determine the operability of offsite power systems under plant technical specifications and for consideration in maintenance risk assessments. Such data would not normally be available to a generating plant operator under the terms of the ORD Agreement.

3.0 Scope and Exceptions.

3.1 All provisions of the ORD Agreement are incorporated herein by reference as if fully set forth and shall apply to the nuclear generating plant except that paragraph 4.1 of the ORD Agreement shall NOT apply to the nuclear generating plant.

3.2 Paragraph 4.1 of the ORD Agreement states as follows:

Except as otherwise provided in this ORD Agreement, operating reliability data will be available only to those entities who are both (i) directly responsible for immediate real-time operating reliability of a portion of the bulk electric system or otherwise have a need for access to data concerning immediate, real-time operations of the bulk electric system (including NERC), and (ii) signatories to this ORD Agreement.

4.0 Conditions of Access.

4.1 As a condition to being granted access to operating reliability data under this Nuclear Plant Data Agreement, the nuclear generating plant agrees as follows:

4.1.1 The nuclear generating plant shall use the operating reliability data it receives under this Nuclear Plant Data Agreement only for the purpose of monitoring grid conditions to

Nuclear Plant Operating Reliability Data Agreement
Approved by Board of Trustees: ▼

Page 1 of 3

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determine the operability of offsite power systems under plant technical specifications and for consideration in maintenance risk assessments and related matters;

4.1.2 The nuclear generating plant shall not disclose operating reliability data received under this Nuclear Plant Data Agreement to merchant employees of the nuclear generating plant or of any of its affiliates; and

4.1.3 The nuclear generating plant shall not disclose operating reliability data received under this Nuclear Plant Data Agreement to any other person except as provided for in Paragraph 5.3 of the ORD Agreement.

5.0 No Obligation to Disclose.

5.1 This Nuclear Plant Data Agreement does not create any obligation on the part of NERC or the disclosing party to disclose operating reliability data to the nuclear generating plant.

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NUCLEAR GENERATING PLANT:

By: _____

Name: _____

Title: _____

Date: _____

DISCLOSING PARTY:

By: _____

Name: _____

Title: _____

Date: _____

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

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By: _____

Name: _____

Title: _____

Date: _____

Nuclear Plant Operating Reliability Data Agreement
Approved by Board of Trustees: ▼

Page 3 of 3

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BUDGET TO ACTUAL VARIANCE ANALYSIS AT MARCH 31, 2009

The ERO has adopted a GAAP presentation of financial results, including depreciation expense in the Statement of Activities for reporting 2009 actual results and presenting the 2010 budget. Current year acquisitions of capitalized assets, which had been included in the Statement of Activities, have been reflected in a Fixed Asset statement, immediately following the Statement of Activities. The Total Change in Assets at the bottom reflects total spend above or (below) total funding.

FUNDING

- **Membership Fees** (Actual \$141.9k over budget) – Additional fees collected from members of the Transmission Owners and Operators Forum (Forum) to fully support the Forum's 2009 budget.
- **Testing** (Actual \$61.9k over budget)
 - System operator testing fees over budget by \$36.6k
 - Certificate renewal fees exceeded budget by \$28.8k
 - Continuing education hours under budget by (\$3.5k)
- **Services and Software** (Actual \$64.8k under budget)
 - GADS Services under budget by (\$72.9k)
 - ESD Software over budget by \$6.2k due to an increase in fees
 - TSIN Fees over budget \$3.6k, as it had been anticipated that NERC would no longer collect these fees after 2008
- **Workshop Fees** (Actual \$8.2k over budget) – Workshop fees were not budgeted as a separate line item, but were netted against workshop expense. For consistency with the regions, actual revenue is recorded as part of 'Total Funding'.
- **Interest** (Actual \$41.3k under budget) – Due to extremely low interest rates, anticipate significantly lower interest income than budgeted.

EXPENSES

- **Personnel Expenses** (Actual \$233.7k under budget)
 - Salaries and Employee benefits are under budget by (\$464.5k). While total FTE's on staff at the end of the quarter equaled budget, unanticipated terminations offset by new hires reflect an overall lower cost.
 - Payroll Taxes and Savings and Retirement were over budget by \$230.8k. This is a timing issue as the budget for these costs is spread equally over 12 months, but actual costs in the first quarter are higher as a result of the bonus payment in February.

- **Meeting Expenses** (Actual \$37.3k under budget) – NERC is making a strong effort in 2009 to control these costs, and while first quarter results are encouraging, it is likely too early in the year to assume that the trend will continue. Total budgeted spend is anticipated.

- **Operating Expenses** (Actual \$569.9k under budget)
 - **Consultants** - (Actual \$665.9k under budget)
 - **Compliance (\$203.1k) under budget** - YTD spend for the C-RATS database is under budget by (\$95.4k); YTD spend for audits of the Regional Entities is under budget (\$47.2k); YTD spend for subject matter experts needed in support of Compliance Violation Investigations under spent by (\$60.5k). Expect total annual spend to equal budget.
 - **Situational Awareness and Infrastructure Security (\$234.1k) under budget** - NASPI project spend less than budget but anticipate total annual spend to equal the annual budget.
 - **Legal (\$247.5k) under budget** – All costs of the 3-year ERO assessment have not been billed. Expect total annual spend to equal budget.

 - **Depreciation Expense** (Actual \$133.5k over budget) – Depreciation expense was not a budgeted item in 2009, as the Statement of Activities was a 'cash basis' report. As noted above, a GAAP presentation of financial results has been adopted, and as a result, depreciation expense will be reported as over budget throughout the course of 2009.

 - **Office Costs** - \$99.3k over budget
 - Computer supplies and maintenance over spent by \$93.7k, offset by (\$135.9k) under spend in capitalized computer hardware and equipment.

North American Electric Reliability Corporation
Statement of Activities
(Unaudited)
From 1/1/2009 through 3/31/2009

(In Whole Dollars)

	2009 YTD Actual	2009 YTD Budget	2009 YTD Actual Variance from Budget	2009 Projection	2009 Budget	2009 Projection Variance from Budget
Funding						
Assessments	8,345,334	8,345,334	0	31,925,048	31,925,048	-
Membership Fees	356,303	214,393	141,910	857,572	857,572	-
Testing	306,944	245,000	61,944	980,000	980,000	-
Services & Software	56,400	121,250	(64,850)	485,000	485,000	-
Workshop Fees	8,200	-	8,200	-	-	-
Interest	8,937	50,000	(41,063)	200,000	200,000	-
Misc.	130	-	130	-	-	-
Total Funding	9,082,248	8,975,977	106,271	34,447,620	34,447,620	-
Expenses						
Personnel Expenses						
Salaries	4,948,642	5,350,821	(402,178)	14,957,116	14,957,116	-
Payroll Taxes	385,633	262,721	122,912	903,209	903,209	-
Employee Benefits	385,317	447,674	(62,356)	1,673,686	1,673,686	-
Savings & Retirement	661,896	553,988	107,908	2,065,661	2,065,661	-
Total Personnel Expenses	6,381,488	6,615,203	(233,714)	19,599,671	19,599,671	-
Meeting Expenses						
Meetings	146,472	182,080	(35,608)	719,320	719,320	-
Travel	457,503	476,485	(18,981)	1,848,938	1,848,938	-
Conference Calls	64,462	47,218	17,244	188,872	188,872	-
Total Meeting Expenses	668,437	705,783	(37,346)	2,757,130	2,757,130	-
Operating Expenses						
Rent & Improvements	191,525	177,881	13,644	711,523	711,523	-
Contracts	791,637	818,250	(26,613)	3,273,000	3,273,000	-
Consultants	572,648	1,238,567	(665,920)	4,954,270	4,954,270	-
Office Costs	331,928	232,635	99,294	898,386	898,386	-
Professional Services	342,978	340,000	2,978	1,360,000	1,360,000	-
Miscellaneous	7,700	1,000	6,700	4,000	4,000	-
Depreciation	133,493	-	133,493	517,613	-	517,613
Total Operating Expenses	2,371,909	2,808,333	(436,425)	11,718,793	11,201,179	-
Other Non-Operating Expenses						
	-	-	-	-	-	-
Total Expenses	9,421,834	10,129,318	(707,484)	34,075,594	33,557,980	-
Net Change in Assets	(339,585)	(1,153,341)	813,756	372,027	889,640	-
Fixed Assets						
Depreciation	(133,493)	-	(133,493)	(517,613)	-	(517,613)
Computer & Software CapEx	51,548	289,069	(237,520)	789,750	789,750	-
Furniture & Fixtures CapEx	13,427	66,250	(52,823)	265,000	265,000	-
Equipment CapEx	101,630	-	101,630	-	-	-
Leasehold Improvements	-	-	-	-	-	-
(Incr)/Dec in Fixed Asstes	(33,112)	(355,319)	322,207	(537,137)	(1,054,750)	517,613
TOTAL CHANGE IN ASSETS	(372,697)	(1,508,660)	1,135,963	(165,110)	(165,110)	-
FTE's	99.0	99.5	(0.5)	109.5	106.5	3.0

**NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION**

Financial Statements

December 31, 2008 and 2007

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NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

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December 31, 2008 and 2007

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INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of
North American Electric Reliability Corporation

We have audited the accompanying statement of financial position of North American Electric Reliability Corporation (the "Corporation") as of December 31, 2008 and 2007, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of North American Electric Reliability Corporation as of December 31, 2008 and 2007, and the changes in its net assets and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Our audit was performed for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary schedules on pages 12 through 14 are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

[DATE]

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

STATEMENTS OF FINANCIAL POSITION

December 31, 2008 and 2007

	December 31,	
	2008	2007
ASSETS		
Cash and equivalents	\$13,832,185	\$ 8,532,029
Accounts receivable, net of allowance for uncollectible accounts of \$10,576 (2008) and \$137,600 (2007)	1,681,954	1,477,182
Prepaid expenses and other current assets	148,923	322,950
Security deposits	15,767	63,978
Cash value of insurance policies	345,845	321,777
Property and equipment	1,151,301	1,007,502
Total Assets	\$17,175,975	\$11,725,418
LIABILITIES AND NET ASSETS		
Liabilities		
Accounts payable and accrued expenses	\$ 905,901	\$ 965,261
Deferred income	5,729,392	2,918,200
Regional assessments collected in advance	6,936,108	5,153,105
Deferred compensation	489,026	458,521
Accrued retirement liabilities	1,018,692	663,650
Total Liabilities	15,079,119	10,158,737
Net Assets - unrestricted	2,096,856	1,566,681
Total Liabilities and Net Assets	\$17,175,975	\$11,725,418

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

STATEMENTS OF ACTIVITIES

Years Ended December 31, 2008 and 2007

	<u>Year Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
Revenues		
NERC assessments	\$25,664,737	\$22,487,331
Testing/fees	1,123,747	664,564
Services and software	330,179	298,488
Workshops	138,350	107,825
Membership	818,995	70,000
Interest	128,404	198,140
Miscellaneous	<u>357</u>	<u>1,679</u>
Total revenues	<u>28,204,769</u>	<u>23,828,027</u>
Expenses		
Salaries	12,653,837	9,562,548
Employee costs	2,175,192	1,679,315
Retirement and savings plans	1,599,031	990,861
Travel and meetings	3,068,298	2,833,386
Services	5,851,795	5,098,694
Rent	732,903	707,935
Office costs	745,536	635,483
Computer	332,348	250,900
Depreciation and amortization	504,136	416,065
Bad debts	<u>11,518</u>	<u>127,000</u>
Total expenses	<u>27,674,594</u>	<u>22,302,187</u>
Increase in unrestricted net assets	530,175	1,525,840
Net assets, beginning of year	<u>1,566,681</u>	<u>40,841</u>
Net assets, end of year	<u>\$ 2,096,856</u>	<u>\$ 1,566,681</u>

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

STATEMENTS OF CASH FLOWS

Years Ended December 31, 2008 and 2007

	<u>Year Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
Cash Flows from Operating Activities		
Change in net assets	\$ 530,175	\$ 1,525,840
Adjustments		
Depreciation and amortization	504,136	416,065
Bad debt expense	11,518	127,000
Deferred compensation	82,505	-
Increase (decrease) in cash from		
Accounts receivable	(216,290)	(1,251,874)
Prepaid expenses and other assets	174,029	(184,618)
Security deposits	48,211	(48,211)
Cash value of life insurance policies	(24,068)	(97,323)
Accounts payable and accrued expenses	(59,362)	470,482
Deferred income	4,594,195	3,427,799
Accrued retirement liabilities	355,042	115,421
Accrued vacation	-	(163,331)
Deferred compensation	<u>(52,000)</u>	<u>70,731</u>
Net cash provided by operating activities	<u>5,948,091</u>	<u>4,407,981</u>
 Cash Flows used in Investing Activities		
Purchases of property and equipment	<u>(647,935)</u>	<u>(706,419)</u>
 Net increase in cash and equivalents	 5,300,156	 3,701,562
Cash and equivalents, beginning of year	<u>8,532,029</u>	<u>4,830,467</u>
Cash and equivalents, end of year	<u>\$13,832,185</u>	<u>\$ 8,532,029</u>

See notes to financial statements.

NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Organization

The North American Electric Reliability Corporation (the "Corporation") is a self-regulatory organization that relies on the diverse and collective expertise of electricity industry participants, subject to government oversight and audit. The Corporation is certified by the U.S. Federal Energy Regulatory Commission ("FERC") as the Electric Reliability Organization ("ERO") within the United States. In the United States, the Corporation has the authority to levy fines and penalties against any of the individual users, owners and operators of the bulk power system for non-compliance with the reliability standards that govern the bulk power system. The Corporation has also been recognized as the ERO by governmental authorities in Canada.

The Corporation's mission is to enhance the reliability and security of the bulk power system in North America. To achieve that, the Corporation develops and enforces reliability standards; monitors the bulk power system; assesses future adequacy; and educates, trains and certifies industry personnel. Entities subject to the Corporation's reliability standards account for virtually all the electricity supplied in the United States of America, Canada and a portion of Baja California Norte, Mexico. On March 15, 2007, FERC approved 83 Reliability Standards issued by the Corporation, the first set of legally enforceable standards for the U.S. bulk power system. Effective June 18, 2007, compliance with approved Reliability Standards became mandatory and enforceable in the United States. Reliability standards became mandatory and enforceable in Ontario, Canada in 2002 and in New Brunswick, Canada in 2004.

The Corporation is the successor to North American Electric Reliability Council (the "Council") which was formed in 1968 in the aftermath of the November 1965 blackout that affected the northeastern United States and Ontario, Canada. On October 31, 2006, the Council entered into an agreement and plan of merger with the Corporation, a New Jersey nonprofit corporation. At the effective date of the merger, January 1, 2007, the separate corporate existence of the Council ceased, and Corporation became the surviving entity. All of the property, assets, rights, privileges, powers, franchises and immunities of the Council became the property of the Corporation. All debts, liabilities and obligations of the Council were also assumed by the Corporation. The Corporation is organized and operates as a business league under Section 501(c)(6). The activities of the Corporation are directed by an independent board of trustees.

The membership of the Corporation is unique. It is a not-for-profit corporation whose members include users, owners and operators of the bulk power system, eight regional entities, large and small end-use customers, state and provincial governmental authorities, and any other interested parties.

Annually, the board of trustees approves an operating budget for the Corporation that includes a mechanism to adjust the overall assessments to load-serving entities to maintain a working capital reserve. The Corporation assesses each LSE its proportional share of the operating budget based on "net energy for load." On an annual basis, the assessments to LSE's make up approximately ninety percent of the overall funding of the Corporation. The Corporation also

NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Nature of Organization (continued)

generates funding from the collection of fees charged for various services the Corporation provides to the bulk power system industry. These services include the maintenance of a certification program for system operators, the development of reports and software programs, and the hosting of workshops to educate the industry on standards development.

The Corporation has entered into separate Delegation Agreements, which have been approved by FERC, with eight Regional Entities: Florida Reliability Coordinating Council ("FRCC"), Midwest Reliability Organization ("MRO"), Northeast Power Coordinating Council ("NPCC"), ReliabilityFirst Corporation ("RFC"), SERC Reliability Corporation ("SERC"), Southwest Power Pool Regional Entity ("SPP"), Texas Regional Entity ("TRE") and Western Electricity Coordinating Council ("WECC"). Through these Delegation Agreements, NERC has delegated certain of its ERO responsibilities and functions to the Regional Entities.

The Corporation must annually approve the eight Regional Entities' budgets and submit them along with its budget and schedule of assessments to load serving entities to FERC for final approval of the budgets and the U.S. portion of the assessments. The Corporation has the sole responsibility to invoice, collect and disburse the monies approved in the Regional Entities' budgets. These pass-through amounts are not included as revenue and expense in the statement of activities, see related Note H.

Basis of Accounting

The financial statements of the Corporation have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America. Net assets and revenues, expenses, gains and losses are classified based on the existence or absence of donor-imposed restrictions.

Basis of Presentation

Financial statement presentation follows the recommendations of the Financial Accounting Standards Board in its Statement of Financial Accounting Standards ("SFAS") No. 117, *Financial Statements of Not-for-Profit Organizations*. Under SFAS No. 117, the Corporation is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets. The Corporation has no temporarily or permanently restricted net assets.

Cash Equivalents

For the purposes of reporting the statements of cash flows, the Corporation considers all highly liquid debt instruments with original maturities of three months or less to be cash equivalents.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Revenue Recognition

The Corporation recognizes assessment revenue billed to the LSE's on a pro-rata basis over the calendar year. Fees generated for testing, certifications, services and software, workshops and other services are recognized when the test is taken, service rendered, and/or workshops are completed. Penalty and fine income (since it is subject to an appeals process) is recognized in the year when the appeals are exhausted and the outcome is determined.

Accounts Receivable

The change in net assets is charged with an allowance for estimated uncollectible accounts based on past experience and an analysis of current accounts receivable collectibility.

Accounts deemed uncollectible are charged to the allowance in the years they are deemed uncollectible.

Property and Equipment

Property and equipment are recorded at cost, net of accumulated depreciation and amortization. Depreciation and amortization is provided over the estimated useful lives of the assets using the straight-line method over periods of three to seven years. Leasehold improvements are amortized over the lesser of the estimated useful life or the remaining lease terms. Repairs and maintenance which do not extend the useful lives of the related assets are expensed as incurred. It is the Corporation's policy to write off fully depreciated property and equipment in the year that it becomes fully depreciated.

Income Taxes

The Corporation has received a determination letter from the Internal Revenue Service concluding that it is exempt from federal income taxes under Section 501(c)(6) of the Internal Revenue Code.

B. PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Leasehold improvements	\$ 199,947	\$ 199,947
Furniture and equipment	1,386,426	1,074,059
Software development	<u>741,348</u>	<u>768,144</u>
Subtotal	2,327,721	2,042,150
Accumulated depreciation and amortization	<u>1,176,420</u>	<u>1,034,648</u>
Total	<u>\$ 1,151,301</u>	<u>\$ 1,007,502</u>

Depreciation and amortization expense was \$504,136 and \$416,065 for the years ended December 31, 2008 and 2007, respectively.

NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

C. LINES OF CREDIT

On February 23, 2007, the Corporation entered into a \$4,000,000 committed line of credit (the "committed line") and a \$1,000,000 discretionary line of credit (collectively, the "Lines") with a New Jersey bank (the "Lender"). During 2008, the \$1,000,000 discretionary line of credit was cancelled by the Lender at the request of the Corporation and the \$4,000,000 committed line, which was originally set to expire on July 22, 2008, was extended to June 15, 2009. The committed line accrues interest at prime plus 0.5% (prime at December 31, 2008 was 3.25%). Total borrowings under the committed line may not exceed 70% of the qualified accounts receivable. The committed line is secured by all existing and future assets. As part of the committed line agreement, the Corporation must maintain \$400,000 in a non-interest bearing account with the Lender. There were no borrowings outstanding at December 31, 2008 and 2007. However, at December 31, 2008 and 2007, the available amount under the lines were reduced by an open letter of credit of \$48,211 which represents a security deposit for the Corporation's office in Washington D.C.

D. OPERATING LEASE COMMITMENT

The Corporation leases its primary corporate office space at Forrestal Village, Princeton, New Jersey. The current lease began September 1, 1993, and expires May 31, 2013. The Corporation also leases office space located in Washington, D.C. The lease commenced on April 1, 2007, and expires on March 31, 2013. The following is a schedule of future minimum rental payments required under the leases:

Year Ending December 31,	
2009	\$ 701,523
2010	732,708
2011	735,288
2012	737,932
2013	<u>289,567</u>
Total minimum future rental payments	<u>\$ 3,197,018</u>

In addition to the above rental payments, the leases are subject to escalation clauses covering increases in real estate taxes and operating costs over the base year.

Office rent expense for the years ended December 31, 2008 and 2007, was \$732,903 and \$707,935, respectively.

E. DEFINED CONTRIBUTION PLAN

The Corporation sponsors an employee savings 401(k) plan (the "Plan") whereby eligible participating employees may elect to contribute up to the Internal Revenue Service Code 402(g)(1) limit. The Corporation contributes a 75% match of the participant's elective contribution up to 6% of eligible compensation. The Corporation also makes a profit sharing contribution of 10% of the compensation of all qualifying participants. The additional profit sharing contributions are subject to the limitation imposed by the Internal Revenue Service Code 401(a)(17). The Corporation's expenses related to the Plan for the years ended December 31, 2008 and 2007, were \$1,599,031 and \$990,861, respectively. The contributions accrued as of December 31, 2008 and 2007,

NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

amounted to \$1,018,692 and \$663,650, respectively.

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NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

F. DEFERRED COMPENSATION AGREEMENTS AND LIFE INSURANCE

During 2005, the Council entered into a deferred compensation agreement (the “deferred compensation agreement”) with a retiring executive that provided benefits to the individual upon reaching normal retirement age and was payable over a period selected by the retiring employee. Under certain circumstances, benefits were payable to his surviving spouse. The Corporation assumed the liabilities upon merger with the Council effective January 1, 2007. The present value of the estimated liability under the agreement at December 31, 2007, was accrued using a discount rate of 4.91%. The Corporation provided for some of the benefit funding through a variable universal life policy. The net unfunded deferred compensation liability relating to this agreement totaled \$136,744, for the year ended December 31, 2007. Effective October 15, 2008, the deferred compensation agreement was superseded by a new agreement. The variable universal life policy used to fund the liability, including the cash surrender value of the policy of \$139,640, was assigned and transferred to the retired executive in January, 2009. In accordance with the new agreement, the Corporation will continue to pay the policy premiums of \$26,000 per year through 2013 and recorded the present value of the unfunded liability at December 31, 2008 of \$124,127, using a discount rate of 1.55%.

The Corporation is the owner and the primary beneficiary or co-beneficiary of life insurance policies on certain employees. The face value of the policies in which the Corporation is a primary or co-beneficiary is \$2,605,500 and \$1,868,500 at December 31, 2008 and 2007, respectively. At December 31, 2008 and 2007, the cash surrender value of all policies were \$345,845 and \$321,777, respectively of which, based on co-beneficiary designations, the Corporation's expected share of the cash surrender value was \$126,042 at December 31, 2007. Pursuant to Executive Benefit Agreements described below and other arrangements, certain policies, including the policy of the aforementioned retired executive, were assigned and transferred, including the cash surrender values of \$170,014, to certain employees in January 2009.

On October 15, 2008, the Corporation entered into Executive Benefit Agreements (the “agreements”) with certain executives and the aforementioned retired executive. These agreements supersede and replace all previous written or oral agreements between the Corporation and these executives. In accordance with the Agreements, while employed by the Corporation, the executives shall be provided with life insurance coverage, through individual and/or group policies, providing a death benefit equal to the lesser of three times base salary or \$500,000, or three times base salary depending upon the executives employment date. The executives agreed to issue split dollar endorsement agreements with respect to such policies. The Corporation is the sole and exclusive owner of the executives' policies. All policy dividends shall be applied to purchase paid-up additional death benefits. Certain executives have multiple insurance policies and the Corporation agreed to pay the premiums on these policies through December 31, 2013, provided the policies stay in force. Premium costs of the policies will be expensed as incurred during the remaining employment terms of the executives.

G. RETIREE MEDICAL BENEFITS

Effective September 1, 2007, the board of trustees approved and adopted a policy to provide retiree medical coverage for certain current retirees and any and all dependents and transition retirees and any and all dependents, as defined by the board resolution, up to a maximum monthly benefit of \$550 paid directly to the applicable insurer. The accrued retiree medical benefits liability of

NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

G. RETIREE MEDICAL BENEFITS (CONTINUED)

\$194,855 is included in deferred compensation and was recorded using the 2004 Social Security Administration Actuarial Period Life Table and the following assumptions: annual inflation rate of 5% and discount rate of 8%. The retiree medical expense related to this policy was approximately \$23,000 and \$22,000 for the years ended December 31, 2008 and 2007, respectively.

H. CONCENTRATION OF RISK AND UNCERTAINTIES

The Corporation maintains cash in bank balances which may, at times, exceed federally insured limits. The Corporation historically has not experienced any credit-related losses.

The Corporation receives a significant portion of its income from assessments, based upon “net energy for load,” to LSE's within the eight regions which are located throughout the United States of America, Canada, and a portion of Baja California Norte, Mexico. LSE's are assessed a proportional share of the Corporation's operating budget as well as a proportional share of the operating budget of the regional entity in whose territory the LSE is located. The Corporation issues quarterly invoices directly to LSE's or, in some circumstances, designees. With respect to LSE's located within Texas Regional Entity (“TRE”), an independent division of Electric Reliability Council of Texas, Inc. (“ERCOT”), the Corporation issues a quarterly invoice to ERCOT which then issues invoices to the LSE's in its region, collects the assessments and remits the funds to the Corporation. The Corporation then remits the regional assessments to TRE/ERCOT. A similar arrangement exists with respect to LSE's located within the Western Electricity Coordinating Council (“WECC”). For LSE's located within the PJM Interconnection (“PJM”), the Corporation issues invoices to PJM which issues invoices to the LSE's, collects the assessments and remits the funds to the Corporation. The Corporation then forwards the regional assessment to Reliability First Corporation (“RFC”), the regional entity. The Corporation is extending credit to the LSE's and designees and is exposed to credit risk to the extent regional assessments are paid by the Corporation to the regional entities prior to collecting assessments from the LSE's or designees. Based on past history, the Corporation believes that its trade accounts receivable credit risk exposure is limited.

I. REGIONAL ASSESSMENTS

In addition to Corporation assessments billed to LSE's or designees, a regional assessment is also billed by the Corporation on behalf of the regional entities. The regional assessment is based on approved budgets of the eight regional entities and remitted to the regional entities by the Corporation. There is a credit risk if the Corporation does not collect the assessments from LSE's or designees before the regional assessments are due to the regional entities. However, the risk is minimal since the Corporation has the ability to reassess and rebill, in a subsequent period for any uncollected assessments. During 2008 and 2007, the regional assessments were:

NORTH AMERICAN RELIABILITY CORPORATION

NOTES TO FINANCIAL STATEMENTS

I. REGIONAL ASSESSMENTS (CONTINUED)

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Total regional assessments billed to WECC, ERCOT, individual LSE's and designees	\$ 69,205,199	\$ 46,270,289
Total regional assessments remitted to regional entities	<u>(69,205,199)</u>	<u>(46,270,289)</u>
Billings over remittances	<u>\$ -</u>	<u>\$ -</u>

The Corporation also billed and remitted \$13,579,635 to WECC related to 2009 regional assessments prior to December 31, 2008.

J. SUBSEQUENT EVENT

In January, 2009, the Corporation assigned and transferred various life insurance policies previously owned by the Corporation to the insured individuals. Total cash surrender value of these life insurance policies at December 31, 2008, was \$170,014. See Note F.

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SUPPLEMENTARY INFORMATION

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NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

SCHEDULES OF EXPENSES

	<u>Year Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
Salaries	<u>\$12,653,837</u>	<u>\$ 9,562,548</u>
Employee costs		
Payroll taxes		
FICA	\$ 523,946	\$ 403,629
NJUC	41,246	35,786
FUI	5,938	5,386
Medicare	185,331	139,149
Employee benefits - medical	1,109,636	835,292
Employee benefits - life/disability	116,431	91,461
Employee benefits - officers life	4,118	54,329
Insurance - workers' compensation	39,870	21,919
Relocation expenses	94,827	66,462
Educational	53,849	25,902
	<u>\$ 2,175,192</u>	<u>\$ 1,679,315</u>
Retirement and savings plans		
401(k) savings plan	<u>\$ 1,599,031</u>	<u>\$ 990,861</u>
	<u>\$ 1,599,031</u>	<u>\$ 990,861</u>
Travel and meetings		
Meetings	\$ 929,712	\$ 948,728
Workshops	78,536	168,184
Travel	1,875,200	1,595,039
On-line meetings	184,850	121,435
	<u>\$ 3,068,298</u>	<u>\$ 2,833,386</u>

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NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

SCHEDULES OF EXPENSES (CONTINUED)

	<u>Year Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
Services		
Temporary office services and agency fees	\$ 62,214	\$ 148,908
Contract and consultants		
Consultants, compliance, certification, software, TMS, standards and contract- readiness audits	2,427,371	2,119,998
IDC	1,610,061	1,347,985
ISN	347,856	333,651
Independent trustee fees	685,225	565,500
Search fees	67,213	66,300
Office and equipment repair/service	31,067	18,733
Record keeping fees	7,644	-
Accounting and auditing fees	70,598	52,803
Legal fees	<u>542,546</u>	<u>444,816</u>
	<u>\$ 5,851,795</u>	<u>\$ 5,098,694</u>
Rent	<u>\$ 732,903</u>	<u>\$ 707,935</u>
Office costs		
Insurance - commercial	\$ 49,230	\$ 45,598
Publications and subscriptions	32,026	25,619
Dues	38,830	35,116
Postage	6,313	16,239
UPS, express mail, etc.	41,449	34,370
Telephone	227,473	169,713
Copying	63,243	39,758
Stationery and office forms	1,578	10,314
Office supplies	107,941	115,605
Bank charges	3,859	25,817
Sales and use tax	28,808	7,359
Card fees	42,524	24,384
Internet expense	88,720	66,362
Miscellaneous	<u>13,542</u>	<u>19,229</u>
	<u>\$ 745,536</u>	<u>\$ 635,483</u>

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

SCHEDULES OF EXPENSES (CONTINUED)

	<u>Year Ended December 31,</u>	
	<u>2008</u>	<u>2007</u>
Computer		
Computer - supplies/service contracts	<u>\$ 332,348</u>	<u>\$ 250,900</u>
Depreciation and amortization	<u>\$ 504,136</u>	<u>\$ 416,065</u>
Bad debts	<u>\$ 11,518</u>	<u>\$ 127,000</u>

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