

Reliability Standards Compliance

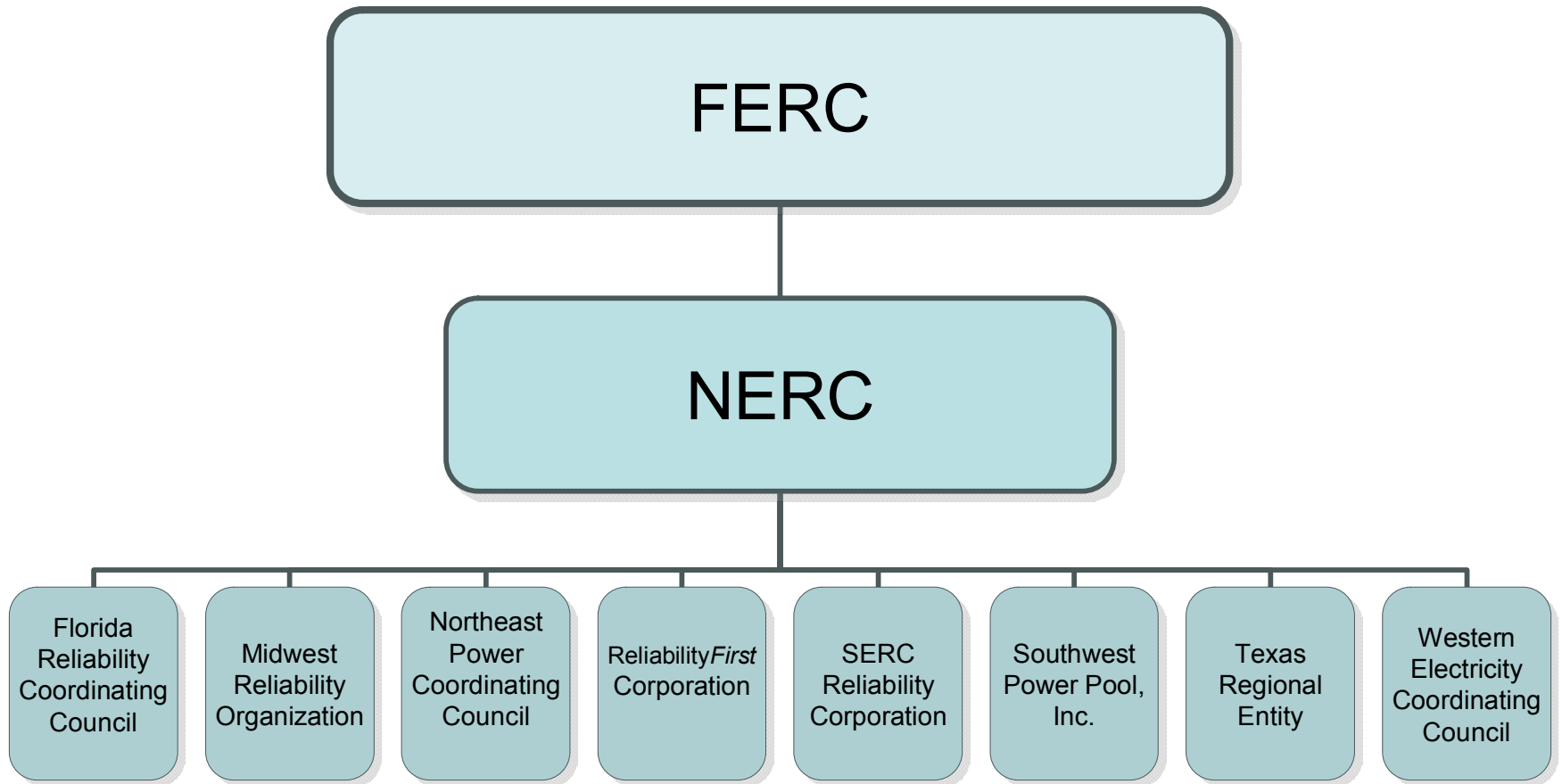
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Compliance and Enforcement Framework



Compliance and Enforcement Framework

- NERC's compliance and enforcement program is set forth in the Compliance Monitoring and Enforcement Program (CMEP) document.
- CMEP is an attachment to the Delegation Agreement of each Regional Entity (RE).
- CMEP sets forth processes for: (1) assessing compliance with Reliability Standards; (2) notifying parties of alleged violations; and (3) seeking a hearing if a party so desires.

Compliance and Enforcement Framework

- CMEP contemplates that REs will perform these functions, but the program is designed to allow NERC to administer the program if an RE is not capable of fulfilling its obligations.
- REs monitor, assess and enforce compliance with Reliability Standards using several different processes to collect information.

Compliance Process

- Compliance Processes:
 - Compliance Audits. All users owners and operators of the Bulk-Power System are subject to audit for compliance with Reliability Standards applicable to the functions for which they are registered. These audits will performed on a three-year cycle.
 - Self-Certifications. Regional Entities may require self-certification with Reliability Standards.

Compliance Process

- Compliance Processes (cont'd):
 - Spot Checking. RE may initiate spot-checking at any time to verify or confirm self-certifications, self-reporting, and periodic data submittals.
 - Compliance Violation Investigations. A investigation may be initiated at any time in response to a system disturbance, complaint, or possible violation of a Reliability Standard identified by other means.

Compliance Process

- Compliance Processes (cont'd):
 - Self-Reporting. Self-Reporting is encouraged at the time a Registered Entity becomes aware of a violation of a Reliability Standard, or a change in the Violation Severity Level of a previously reported violation.
 - Periodic Data Submittals. Periodic data submittals are required in accordance with the schedule stated in the applicable Reliability Standard, established by the Regional Entity, or on an as-needed basis.

Compliance Process

- Compliance Processes (cont'd):
 - Exception Reporting. Some Reliability Standards require reporting of exceptions to compliance as a form of compliance monitoring.
 - Complaints. NERC or REs may receive Complaints alleging violations of a Reliability Standard.
- Each compliance process can lead to a Notice of Alleged Violation, which begins the enforcement process.

Hearing Process

- NERC and REs developed a uniform hearing process in order to ensure that parties would not encounter different regimes in different parts of the country.
- NERC and REs also wanted to ensure that the hearing process addressed due process concerns.
- Attachment 2 to CMEP sets forth hearing procedures.

Hearing Process – Notice of Alleged Violation

- Notice of Alleged Violation is the key event.
- The Notice will include:
 - the Reliability Standard that has been allegedly violated;
 - the date and time the alleged violation occurred;
 - the facts demonstrating the alleged violation;
 - the proposed penalty, if any, including an explanation of the basis of the penalty; and
 - process for submitting a Mitigation Plan.

Hearing Process – Notice of Alleged Violation

- The Notice will also:
 - alert the Registered Entity that, within thirty (30) days, it must elect one of the following options. It must either:
 - agree with the alleged violation and proposed penalty and agree to submit and implement a Mitigation Plan to correct the violation and its underlying causes, and may provide a response; or
 - agree to the alleged violation and agree to submit and implement a Mitigation Plan to eliminate the violation and its underlying causes, but contest the proposed penalty, and may provide a response, or
 - contest both the alleged violation and proposed penalty.
 - NERC shall forward a copy of the notice of Alleged Violation to FERC and any other applicable governmental authority within two (2) business days of receipt from the RE.

Hearing Process – RE Conference

- After a response to a Notice of Alleged Violation is filed, RE will schedule a conference with the Registered Entity within ten days. The purpose of the conference is to settle.
- Settlement may occur at any time during the process – from Notice of Alleged Violation through the appeal to NERC.
- Reliability best served through consensus.

Hearing Process

- Registered Entity must file its hearing request within forty (40) days after:
 - the Registered Entity files its Response to the Notice of Alleged Violation; or
 - the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity’s proposed Mitigation Plan.
- Registered Entity must select shortened hearing procedure or full procedure.

Shortened v. Full Hearing

- If Registered Entity requests full hearing procedure, full hearing procedures shall apply.
- If Registered Entity selects shortened hearing procedure, RE compliance staff must agree to shortened procedure or full procedure will apply.
- Once shortened or full procedure is agreed to, parties cannot revert to other form of procedure unless parties agree.

Full Hearing Procedures

- Within 7 days of the request for hearing, RE shall issue a Notice of Hearing.
- Within 14 days of the Notice of Hearing, a Prehearing Conference will be held.
- RE may utilize a Hearing Officer.
- Hearing Officer or Hearing Body may utilize Technical Advisors.

Technical Advisors

- The Hearing Officer and/or the Hearing Body may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding.
- Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, initial determination of violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding.
- If the Hearing Officer or the Hearing Body uses a Technical Advisor, the Hearing Officer or Hearing Body shall disclose the identity and professional affiliations of the Technical Advisor within two (2) days of the Technical Advisor's assignment to the proceeding.

Disqualification

- Disqualification:
 - A Hearing Officer, Technical Advisor or member of the Hearing Body shall recuse himself or herself from a proceeding if participation would violate RE's conflict of interest policy.
 - Any Party may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Body from a proceeding on grounds of a conflict of interest, an *ex parte* communication, or the existence of other circumstances that could interfere with the impartial performance of his or her duties.
 - If a quorum of the Hearing Body does not remain after recusals, then the Hearing Body shall appoint a new member(s) to create a quorum.

Full Hearing Procedures

- Summary Disposition
- Status Hearings
- Motions
- Use of Experts
- Discovery
- Witness Testimony and Exhibits
- Protective Orders
- Cross-Examination
- Initial Opinion
- Briefs on Exceptions
- Oral Argument
- Hearing Body Final Order

Discovery

- Registered Entity is entitled to review all documents used in determination of alleged violation.
- The discovery process is modeled after NASD process, which FERC cited as a model for ERO hearing procedures.
- The discovery process is not equivalent to process used in a civil or FERC proceeding, *i.e.* it is a two-party process.
- FERC required hearing process be limited to Registered Entity that has allegedly violated a Reliability Standard and Compliance Staff. This is consistent with non-public nature of the investigation and hearing.

Shortened v. Full Hearing

- Shortened Procedure:
 - May utilize a Hearing Officer.
 - No evidentiary hearing.
 - No witness testimony or briefs, except briefs on exceptions.
 - Hearing Body strives to issue Final Order in 90 days.

Remedial Action Directives

- RE may issue a Remedial Action Directive when immediate action is necessary to protect the reliability of the bulk-power system.
- Remedial Action Directives may be issued at any time, including during the hearing process.
- RE will coordinate with Reliability Coordinator to ensure Remedial Action Directive does not conflict with Reliability Coordinator directives.

Remedial Action Directives

- Registered Entity may dispute Remedial Action Directive and request expedited hearing.
- Timeline:
 - Submit request for hearing within 2 days of receipt of directive.
 - Hearing Body convened within 2 days of hearing request.
 - Hearing held within 7 days.
 - Hearing Body issues summary decision within 10 days of hearing completion; Registered Entity must comply with directive at this point.
 - Hearing Body will issue full decision within 30 days of issuance of summary decision.

Sanction & Penalty Principles

- Not all standards are created equal
- What is the significance to grid reliability?
- Penalties are comparable to level of threat to reliability
- Compliance is encouraged by adjusting penalties for being pro-active (examples = self-reporting & voluntary corrective action)

Sanctions

- Sanctions are **non-monetary** in nature and may include, but are not be limited to, the following:
 - Limitations on activities, functions, operations, or other appropriate sanctions
 - Notification to Board of Directors, Regulators, and others

Penalties

- Penalties are **monetary fines** levied against an entity for violation of a reliability standard
- Penalties should bear a reasonable relationship to the seriousness of the violation

Determine Initial Range of Base Penalty Amount (BPA)

- Violation Risk Factor
- Violation Severity Level

Violation Risk Factor (VRF)

- Assigned to each requirement in a reliability standard
- One of three defined levels of risk is assigned: Low, Medium, High
- Risk Factors associated with real-time operation are often high since they have the immediate impact on the BPS

Violation Severity Level (VSL)

- VSL is the measurement of the degree to which the requirement of a reliability standard was violated
- Up to four levels are defined for each requirement
 - Lower
 - Moderate
 - High
 - Severe

Determining the VRF and VSL

- VRF is determined pre-violation and is a static indication of the relative potential impact to the reliability of the BPS
- VSL is assessed post-violation and is an indicator of the severity in which the standard was violated

Base Penalty Amount Table (Proposed)

Note: Amounts listed in the table are “generally” per incident. However in the U.S. NERC is authorized on a “per day” basis.

	Violation Severity Level							
Violation Risk Factor	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	Low	High	Low	High	Low	High	Low	High
Lower	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
Medium	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
High	\$4,000	\$125,000	\$8,000	\$300,000	\$12,000	\$625,000	\$20,000	\$1,000,000

Identify the Relation of the Penalty to the Seriousness of the Violation

Determine Impact (actual or potential) to BPS:

- Penalties shall bear a reasonable relation to the seriousness of the violation
- Make assessment by reviewing the violation to (or with) the characteristics of the violator's operation
- Size is one characteristic of a violator's operation

Mitigating and Aggravating Factors

- Mitigation factors deduct from base penalty
- Aggravating factors add to base penalty

Mitigating Factors – Deduct From Base Penalty

- Self-disclosure & voluntary corrective action by the violator
 - Consider whether a violator self-disclosed the violation **prior to detection or intervention**, and any action undertaken by the violator to correct the situation
- Degree and quality of cooperation in violation investigation and remedial action
 - Consider if the violator has cooperated in the investigation

Mitigating Factors – Deduct From Base Penalty

- Presence of violator’s internal compliance program
 - Review the violator’s internal compliance program and consider a penalty deduction, **but will not increase** a violator’s penalty specifically on the grounds that the violator **has no program or a poor quality program**
- Extenuating circumstances
 - In cases where extenuating circumstances exist, the penalty and/or sanctions may be significantly reduced or eliminated (example - severe storm caused reassignment of staff)

Aggravating Factors – Add To Base Penalty

- Repetitive violations
 - Consider if the violator had **repeated violations** of the same reliability standard
- Failure of the violator to comply with compliance directives
 - Consider if the violator incurs a violation in spite of having received related compliance directives

Aggravating Factors – Add To Base Penalty

- Violation Concealment
 - Consider if any **purposeful misrepresentation**, or an attempt to conceal the violation or information needed to investigate the violation has occurred
- Intentional violations
 - Consider if the violation was intentional **without just cause**