

## Agenda

# Compliance Committee Meeting

February 9, 2021 | 12:30-1:30 p.m. Eastern

Virtual Meeting

**WebEx Link:** [Join Meeting](#)

### Introduction and Chair's Remarks

### NERC Antitrust Compliance Guidelines\*

### Agenda Items

- 1. Minutes\* – Approve**
  - a. November 3, 2021 Open Meeting
- 2. Facility Ratings Activities\* – Update**
- 3. Compliance Guidance\* – Update**
- 4. Compliance Monitoring and Enforcement Program Annual Report\* – Update**
- 5. Annual Review of Compliance Committee Mandate\* – Update**
- 6. Other Matters and Adjournment**

\*Background materials 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 **Compliance Committee**

November 3, 2021 | 2:30 p.m. - 3:30 p.m. Eastern

### Conference Call

Mr. Robin E. Manning, Chair, called to order the duly noticed meeting of the Board of Trustees Compliance Committee (CC or Committee) of the North American Electric Reliability Corporation (NERC) on November 3, 2021, at approximately 2:30 p.m. Eastern Time, and a quorum was declared present.

Present at the meeting were:

#### **Committee Members**

Robin E. Manning, Chair  
Jane Allen  
Kenneth W. DeFontes, Jr., ex officio  
George S. Hawkins  
Susan Kelly  
Roy Thilly

#### **Board of Trustees Members**

Robert G. Clarke  
Larry Irving  
Suzanne Keenan  
Jim Piro  
James B. Robb, President and Chief Executive Officer  
Colleen Sidford

#### **NERC Staff**

Tina Buzzard, Assistant Corporate Secretary  
Manny Cancel, Senior Vice President and CEO of the E-ISAC  
Kelly Hanson, Senior Vice President, Chief Administrative Officer  
Mark Lauby, Senior Vice President and Chief Engineer  
Kiel Lyons, Senior Manager, Compliance Assurance  
James McGrane, Senior Counsel  
Sônia Mendonça, Senior Vice President, General Counsel, and Corporate Secretary  
Steven Noess, Director, Regulatory Programs  
Lonnie Ratliff, Senior Manager, Cyber and Physical Security Assurance  
Janet Sena, Senior Vice President, External Affairs  
Teri Stasko, Assistant General Counsel and Director of Enforcement  
Mechelle Thomas, Vice President, Compliance

#### **Introduction and Chair's Remarks**

Mr. Manning welcomed the members of the Committee to the meeting.

#### **NERC Antitrust Compliance Guidelines**

Ms. Buzzard directed the participants' attention to the NERC Antitrust Compliance Guidelines included in the advance agenda package and indicated that all questions regarding antitrust compliance or related matters should be directed to Ms. Mendonça.

## **Minutes**

Upon motion duly made and seconded, the Committee approved the February 3, 2021 Closed Meeting minutes.

### **COVID-19 Related Activities**

Ms. Stasko and Mr. Noess provided an update on recent COVID-19 related activities. Ms. Stasko noted that the ERO Enterprise took prompt action to protect the health and safety of personnel during the COVID-19 pandemic. In particular, the ERO Enterprise deferred onsite activities and temporarily expanded the self-logging program. Ms. Stasko provided a reminder that both the deferment of onsite activities and the temporary expansion of the self-logging program are set to expire at the end of this year. Regarding the temporary expansion of self-logging, which allowed registered entities to log minimal or moderate risk noncompliance related to their COVID-19 response, Ms. Stasko noted a decline in logged items and stated the ERO Enterprise has not received any logged noncompliance during the last three months. Regarding the expiration of the deferment of onsite activities, Mr. Noess described the ERO Enterprise's approach for resuming onsite Compliance Monitoring and Enforcement Program (CMEP) and Certification activities. Mr. Noess explained that the ERO Enterprise will resume onsite activities on a case-by-case basis, prioritizing health and safety in a risk-informed manner.

### **Facility Ratings**

Ms. Stasko introduced the update on Facility Ratings activities, noting that she and Steven Noess would primarily present on this agenda item and that Tim Ponseti from SERC and Steve Goodwill from WECC may respond to questions or provide additional comments. Ms. Stasko stated that strong and sustainable Facility Ratings programs are essential for reliable planning and operation of the Bulk Power System (BPS). Mr. Noess explicitly stated that this presentation was an ERO Enterprise call to action to registered entities that have not yet reviewed the accuracy of their facility ratings. He explained the ERO Enterprise call to action involves prevention, assessment, and recovery. Mr. Noess noted helpful coordination with the North American Transmission Forum and the Compliance and Certification Committee to address this issue. Recognizing the messaging the ERO Enterprise has done regarding the importance of accurate Facility Ratings, Mr. Noess and Ms. Stasko encouraged entities to proactively assess their Facility Ratings programs for accuracy and sustainability, particularly around change management, and to promptly self-report any identified noncompliance.

The Committee discussed the complexity of the issue, and that inaccurate Facility Ratings could have resultant adverse impacts on the BPS as these ratings factor into real-time decision making and planning. The Committee highlighted that not all issues are the same, some may be minimal risk while others are serious, and that the ERO Enterprise has processes in place to address risk accordingly. Given the ERO Enterprise's call to action, the Committee expressed a desire to hear a response from industry participants in the future.

### **2022 CMEP Implementation Plan**

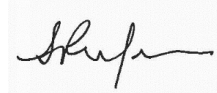
Mr. Lyons explained that the CMEP Implementation Plan (CMEP IP) is the annual operating plan used by the ERO Enterprise in performing CMEP responsibilities and duties. He further explained that the 2022 risk elements identified in the 2022 CMEP IP reflect the continued maturation of the risk-based approach to compliance monitoring. Mr. Lyons stated that the COVID-19 pandemic has caused some risks to BPS

operations and the risk element descriptions have been updated slightly from 2021 to reflect some of these concerns.

**Adjournment**

There being no further business, and upon motion duly made and seconded, the meeting was adjourned.

Submitted by,



Sônia Mendonça  
Corporate Secretary

## Facility Ratings Activities Update

### Action

Update

### Summary

At the November 3, 2021 meeting, NERC and Regional Entity staff provided an update and presentation related to the ERO Enterprise's activities and continued focus on Facility Ratings. During the meeting, the ERO Enterprise shared its call to action to address risk related to inaccurate Facility Ratings. The call to action supports the development and sustainment of registered entity risk-based Facility Ratings programs and resolution of Facility Ratings noncompliance using existing tools. Also during the meeting, the Compliance Committee expressed interest in hearing industry perspectives. The North American Transmission Forum (NATF) offered to provide a report on its members' implementation of the NATF Facility Ratings practices, which were developed by a team of subject-matter experts from NATF member companies.

ERO Enterprise staff and NATF will update the Compliance Committee on Facility Ratings matters, including the following:

- Facility Ratings interrelations with operations and planning Reliability Standards;
- The ERO Enterprise's call to action, which involves prevention, assessment (of current conditions and recent monitoring), and recovery (gap closure, sharing practices, registered entity opportunities for self-evaluation, enhanced mitigation activities, and consistent enforcement); and
- NATF members' implementation of the NATF facility ratings practices. The "NATF Facility Ratings Practices Document," published for NATF members in mid-2020, provides guidance for establishing sustainable Facility Ratings programs, processes, and internal controls to help ensure that Facility Ratings are accurate and that ratings for equipment and facilities are documented and communicated. The NATF Facility Ratings practices are consistent with practices and controls suggested by the ERO Enterprise in its November 2019 Facility Ratings problem statement and in reports and webinars conducted by NERC and the Regional Entities. NATF has been promoting and supporting member's implementation of these practices including sharing of related lessons learned and targeted assistance where warranted.

## Compliance Guidance

### Action

Update

### Background

NERC staff will provide an update and presentation focused on the NERC Board of Trustees (BOT)-approved [Compliance Guidance Policy](#).

### Summary

In 2015, The NERC Board of Trustees approved the Compliance Guidance Policy related to Compliance Monitoring and Enforcement Program (CMEP) guidance. The policy set forth a set of principles for two types of compliance guidance: Implementation Guidance and CMEP Practice Guides. Additional information about the program and the approved guidance documents themselves are available from the [Compliance Guidance section](#) on NERC's web site.

### Implementation Guidance:

Implementation Guidance provides a means for registered entities, through pre-qualified organizations, to develop examples or approaches to comply with a standard. Implementation Guidance approaches or examples are not necessarily the only way or even the best way to comply with a standard, but they should highlight one or more effective ways an entity could comply with a standard.

Implementation Guidance must be "endorsed" by the ERO Enterprise. Endorsement means that the ERO Enterprise recognizes the guidance as appropriate for deference during CMEP activities, and the ERO Enterprise agrees that entities can rely on the guidance and be reasonably assured that following the approach will result in meeting compliance (subject to individual facts, circumstances, and system configurations). The ERO Enterprise collaborates to endorse or non-endorse using a consensus-based system among NERC and the Regional Entities (REs), which does not require unanimity. Contrary to some misperceptions, endorsement is not subject to individual RE "veto" power.

The ERO Enterprise must maintain independence and objectivity, so it narrowly tailors endorsement to ensure Implementation Guidance appropriately describes approaches or examples to meet compliance. Since endorsement materially represents agreement that the approaches are compliant, the ERO Enterprise only endorses Implementation Guidance that meets those criteria. The ERO Enterprise will not endorse Implementation Guidance that has additional or inappropriate information that goes beyond providing an approach or example. For instance, Implementation Guidance is non-endorsed when it includes statements that conflict with the standard, seems to prescribe audit approaches, or provides interpretive or position statements. Further, information that is more akin to a whitepaper or technical reference must be in supporting appendices, and the ERO Enterprise endorsement is limited to the examples or approaches, and not the appendices.



In order to help pre-qualified organizations ensure that only appropriate information be included in Implementation Guidance, the ERO Enterprise:

- Provides direct feedback (for example, direct feedback during meetings to standard drafting teams or to technical committee teams that are developing guidance, as they are developing it),
- Conducts periodic outreach (a webinar for pre-qualified organizations occurred in 2020, and additional outreach will occur in 2022),
- Maintains a [Frequently Asked Questions](#) document,
- Publishes a comprehensive [Implementation Guidance Development and Review Aid](#), which acts as an “open book test” on the types of items that will result in non-endorsement from the ERO Enterprise.

While there are many reference materials in support of Implementation Guidance, many submissions still have components that the ERO Enterprise cannot endorse under its independent and objective principles. The ERO Enterprise maintains a roster on the Compliance Guidance web site of [Non-Endorsed Implementation Guidance](#) to serve as an aid and learning resource for those instances. The most common, recurring reasons for non-endorsement include:

- Does not include examples or approaches on how to comply,
- Changes the scope of a requirement,
- Includes incomplete or potentially misleading examples,
- Includes an interpretation or position statement,
- Includes material making the document akin to a whitepaper, technical reference, etc., that does not meet endorsement criteria.

There has been an uptick of Implementation Guidance submissions that do not meet the ERO Enterprise’s criteria for endorsement. For example, in 2021, eleven Implementation Guidance submissions were non-endorsed for reasons outlined in the Development and Review Aid. There is also some perception that the endorsement process for Implementation Guidance has been slow, though often this has been related to submissions that do not meet the endorsement criteria. In some cases, there has been frustration by pre-qualified organizations when their submissions are non-endorsed during resubmission because the ERO Enterprise found additional reasons for non-endorsement. While it seeks to minimize those instances, the ERO Enterprise must be able to endorse with independence and objectivity, free from external conditions or influence that threaten its ability to carry out its responsibilities in an unbiased manner. The ERO Enterprise is trying to reduce those instances through increased coordination and clarity of feedback going forward.

In 2022, the ERO Enterprise intends to expand its outreach to build on the 2020 training, coordinate more closely with pre-qualified organizations that may wish to vet their document with the ERO Enterprise during development, and continue working with standard drafting teams to evolve solutions for removing “Technical Rationale” and “Guidelines and Technical Basis” sections from standards (in many cases, they are also not appropriate for submission as Implementation Guidance).

#### **CMEP Practice Guides:**

CMEP Practice Guides address how ERO Enterprise staff executes CMEP activities and are not compliance approaches to comply with standards. They do not change or supersede any standard, and the obligation for compliance and enforcement for a registered entity remains

from the enforceable standards. Practice Guides are guidance independently developed “by” the ERO Enterprise and “for” the ERO Enterprise to serve a legitimate regulatory interest to ensure staff review and implement certain activities with harmonized perspectives and in an independent and objective manner.<sup>1</sup> They are publicly available to provide transparency to entities.

Practice Guides are written to address many different types of ERO Enterprise CMEP activities, and they are specifically not limited to whether there is “compliance” during “auditing” or “monitoring.” Understanding how an entity mitigates risk, designs and implements internal controls, and establishes a strong compliance culture, among other activities, are essential components of auditing principles that inform such things as oversight planning, risk assessment, scoping engagements, and feedback to standards (on implementation effectiveness).<sup>2</sup>

For Example, the ERO Enterprise recently posted a [Practice Guide for Cold Weather Preparedness](#) related to the initial Cold Weather Reliability Standards that are not subject to enforcement until 2023. While there is no obligation to comply with the standards in advance of their enforcement date, the ERO Enterprise has provided guidance to its staff to help understand planning and progress toward implementation and awareness. The ERO Enterprise’s mission is “to assure the effective and efficient reduction of risks to the reliability and security of the grid.” During CMEP activities, as part of a spectrum of possible interactions with registered entities, the ERO Enterprise has a CMEP-related interest in understanding implementation progress and awareness of upcoming standards, which has direct relevance to informing future oversight approaches and risk assessment activities.

While Practice Guides are ERO Enterprise-created documents, NERC staff indicates on the [ERO Enterprise Program Alignment](#) page’s [Issues and Recommendations Tracking](#) spreadsheet when it is developing a Practice Guide. NERC also shares drafts of Practice Guides during development with the Compliance and Certification Committee Executive Committee for input and perspective to confirm understanding and perception before finalizing. Through these actions and by posting them publicly, the ERO Enterprise believes it is providing a benefit of transparency to registered entities about the independent guidance it is providing its staff.

Policy input suggests that entities appreciate seeing Practice Guides posted publicly, though some entities have expressed concern about how they are supposed to use them. To help clarify, the ERO Enterprise recently added a prominent disclaimer at the top of all practice guides indicating that they are intended for use by ERO Enterprise staff to support consistency, they are developed exclusively by the ERO Enterprise under its obligations for independence and objectivity, and they are posted publicly solely to provide transparency.

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<sup>1</sup> The Compliance Guidance policy also provides that, at times, Practice Guides may be developed following policy discussions. Specifically, the policy states, “In the event a CMEP Practice Guide will be used to inform ERO Enterprise staff on how to conduct compliance monitoring and enforcement activities as an interim solution until a standard could be revised, the ERO will hold policy discussions with industry prior to developing the CMEP Practice Guide.” To date, there has not been a Practice Guide developed as an interim solution.

<sup>2</sup> The Compliance Guidance policy further supports this by indicating CMEP Practice Guides will include, “direction to ERO Enterprise CMEP staff on approaches to carry out compliance and enforcement activities, including discretion to be applied, auditing practices, risk assessment techniques, policies to be implemented, particular areas of focus for CMEP activities, and to foster consistency in compliance and enforcement.”

## **Compliance Monitoring and Enforcement Program Annual Report**

### **Action**

Update

### **Background**

NERC staff will present an overview of the [Compliance Monitoring and Enforcement Program and Organizational Registration and Certification Program 2021 annual report](#), focusing on key trends.

## **Annual Review of Compliance Committee Mandate**

### **Action**

Update

### **Summary**

As part of the annual review of all Board committee mandates, the NERC Legal Department has reviewed the current Board of Trustees Compliance Committee mandate, which is posted on NERC.com.<sup>1</sup> The Legal Department is not recommending any revisions at this time.

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<sup>1</sup><https://www.nerc.com/gov/bot/BOTCC/Related%20Files/BOTCC%20Mandate%20APPROVED%20February%202018.pdf>.