

# **SERC Compliance Monitoring and Enforcement Program**

## **Implementation Procedure 3.4 Compliance Violation Investigation**



## SERC CMEP Implementation Procedure 3.4: Compliance Violation Investigation

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### Revision History

Revision	Date	Originator	Comments
0	May 31, 2007	Lim	Document Origination.
1	November 20, 2008	Ladrow	Complete rework to reflect experience, NERC guidance and ROP changes.
2	April 21, 2009	Ladrow	Changes to reflect December 19, 2008 CMEP

### Cross Reference Table

The procedures listed in the table below refer to this procedure, 3.4 Compliance Violation Investigation. As revisions are made to 3.4 Compliance Violation Investigation, the Originator should review the procedures listed to determine if corresponding changes to these procedures are warranted.

Procedure Number	Procedure Title
5.0	Consolidated Compliance Enforcement Tracking
3.8	Complaints

### Responsible SERC Group(s)

SERC Board Compliance Committee (BCC)

### Review and Re-Approval Requirements

This document will be reviewed every two years or as appropriate for possible revision. The existing or revised document will be re-approved by the SERC Board Compliance Committee (BCC), distributed by the Compliance Director to all applicable SERC staff, and posted on the website for Registered Entity and SERC Member reference.

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### 1.0 Purpose

The purpose of this procedure is to define the steps required to execute a Compliance Violation Investigation (CVI). As set forth in NERC's Rules of Procedure, Section 403.13 and Section 3.4 of NERC's Compliance Monitoring and Enforcement Program (CMEP) document, a Compliance Violation Investigation may be initiated at any time by SERC Reliability Corporation, NERC, or FERC in response to a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means.

A Compliance Violation Investigation is defined by the CMEP as: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

This document identifies and discusses the processes and principles to be followed in a CVI. This document notes but does not otherwise address the progression of actions and steps that SERC will follow to process any violations identified, during the course of a CVI, from the initial discovery as a probable violation, through the final determination as a post-appeal confirmed violation.

### 2.0 Responsibilities

- SERC Compliance Director (CD) or designee will be responsible for Compliance Violation Investigations consistent with this procedure.
- The CD will authorize any SERC led compliance violation investigation, reconcile objections to CVI team members, and approve investigation results.
- The CD will define the scope of the investigation, assign an investigation lead (CVI Team leader), and facilitate obtaining required team expertise.
- The SERC CVI Team leader has responsibility for leading the investigation, collecting data, preparing the final report, and providing updates to the team members and the CD.
- NERC's appointed individual will be the single point of contact for SERC to involve NERC in the CVI.
- FERC may, at its discretion, appoint members to the CVI team.
- A member of SERC Compliance staff will be responsible for serving as investigation leader and as the single-point-of-contact (SPOC) to perform initial fact-finding.
- The CVI team will be comprised of Compliance staff, appointed industry experts, and NERC and FERC staff.
- NERC may, at its discretion, assume leadership of selected Compliance Violation Investigations. In addition, SERC may ask NERC to assist with the CVI or to assume leadership of a CVI if it deems necessary.
- Registered Entities will retain and provide information and data required to support compliance violation investigations in a timely manner as requested by the CVI

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Team leader. The Registered Entity will also facilitate conduct of interviews and other exchange of information with key personnel related to the investigation.

### 3.0 References

- SERC Reliability Corporation Delegation Agreement
- NERC Rules of Procedure Section 403.13
- SERC CMEP Section 3.4

### 4.0 Procedure Steps

#### 4.1 Compliance Violations Investigations

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

Compliance Violation Investigations will generally be led by SERC's Compliance Enforcement Staff. NERC reserves the right to assume the leadership of a CVI. SERC shall not be entitled to appeal NERC's decision to lead a Compliance Violation Investigation. SERC may, if it deems necessary, ask NERC to assist with the CVI or to assume leadership of a CVI.

Situations that may trigger a compliance violation investigation include, but are not limited to (i) significant problems arising on the system, (ii) chronic violations, (iii) bulk power system owners, operators, and users not submitting required data in a timely or accurate manner, (iv) probable violations identified during audits, (v) probable violations identified during spot-checks, (vi) filing of a compliance complaint with the regional entity or NERC, or (vii) Nuclear Regulatory Commission-defined incidents occurring on the transmission system.

#### 4.2 Objective of Compliance Violation Investigation

The objective of the SERC Compliance Violation Investigation Procedure is to efficiently perform a fair, objective, and comprehensive review of any activities identified as compliance concerns or possible violations of any applicable regulatory approved Reliability Standards (e.g., FERC approved Regional Standards). During the course of a CVI it is not expected that a possible violation will result for each compliance concern reviewed by the CVI team.

#### 4.3 Determination of Need

SERC is notified or becomes aware of circumstances indicating a possible violation of a Reliability Standard and determines whether a Compliance Violation Investigation is warranted.

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The CVI process would typically be reserved for more severe or complex possible violations of Reliability Standards discovered or suspected as a result of a system disturbance, Complaint, or possible violation of a Reliability Standard identified by any other means and determines the need for CVI, although the determination of the need for a SERC led CVI is at the sole discretion of the SERC CD.

Events listed below could typically initiate the CVI process:

- Events reportable to NERC or applicable regional compliance process (i.e., NERC Standard EOP-004-0 - Disturbance Reporting).
- Events that resulted in “near-miss” situations where the situation could have had more severe consequences.
- Submittal of an OE-417 form or a report to NERC in accordance with the NERC disturbance-reporting standard: EOP-004-0.
- Nuclear or other power plant tripping or operational problem, reported to SERC and/or the NRC where Generation and/or Transmission Owner equipment did not operate as intended or within a nominal range and may have been the cause or a contributing factor to the tripping or problem.
- Events, due to their impact or severity, warrant a comprehensive review.
- Events involving multiple generation or transmission facilities tripping, where the cause cannot be immediately explained or that may have involved personnel error.
- Chronic or repetitive failures to comply with Reliability Standards.

Events listed below would typically **not** initiate the CVI process:

- Events triggered due to weather or other acts of nature or where equipment operated as intended or within a nominal range of what is expected.
- Events triggered on sub-transmission or distribution systems, resulting in minimal impact on the transmission system.
- An event linking generator owned and operated equipment where Generation and Transmission Owner equipment operated as intended or within a nominal range of what is expected.
- Events originating outside the transmission system where Generator and Transmission Owner equipment operated as intended or within a nominal range of what is expected.
- An event where the event is limited to the complete failure of or misoperation of a single transmission system component and otherwise transmission system equipment operated as intended or within a nominal range of what is expected and did not contribute to significant reliability problems or violations of reliability criteria or standards.

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### 4.4 Notifications

Within 2 Business Days of the CD determining the initiation of a CVI:

- 4.4.1. SERC notifies the Registered Entity of the initiation and initial scope of the Compliance Violation Investigation, the requirements to preserve all records and information relevant to the CVI and, where appropriate, the reasons for the CVI.
- 4.4.2. SERC may, at its discretion, notify the Registered Entity of the reasons for its investigation, although the investigation, as it unfolds, need not be limited to this scope.
- 4.4.3. SERC notifies NERC of the initiation of the investigation and the reasons for the CVI. NERC notifies FERC 2 business days after NERC is notified of CVI.

### 4.5 NERC Staff Assignment

NERC will assign a staff member to the Compliance Violation Investigation to act as a Single Point of Contact with NERC.

### 4.6 SERC Staff Assignment

The SERC Compliance Director will assign staff to lead and participate on the CVI Team.

### 4.7 SERC Develops Team

- 4.7.1. A SERC led CVI team will typically consist of SERC Compliance Enforcement Staff, SERC Auditors, Industry Experts with specific skills relevant to the event, and a NERC and FERC representative, if each chooses to participate.
- 4.7.2. Industry experts and SERC Members may be called upon to provide their technical expertise in CVIs.
- 4.7.3. Industry experts and SERC Members shall have no conflict of interest or financial interests in the outcome of their activities associated with the CVI.
- 4.7.4. Experts may provide input to the SERC compliance staff so long as the authority and responsibility for (i) initially evaluating compliance or noncompliance and (ii) levying penalties, sanctions, or remedial actions shall not be delegated to any person or entity other than the SERC Compliance Staff.
- 4.7.5. Industry experts and Regional Entity staff and members involved in the CVI shall sign a confidentiality agreement appropriate for the activity being performed.
- 4.7.6. All industry experts and SERC Members participating in CVIs shall successfully complete auditor training provided by NERC or SERC prior to performing these activities.

### 4.8 Data Request

- 4.8.1. SERC will make a data request(s) (Request for Information (RFI)) to determine the Registered Entity's compliance with applicable Reliability Standards.
- 4.8.2. SERC may, at its discretion, require the Registered Entity to submit the data for

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each data request in a specified format.

- 4.8.3. SERC may, at its discretion, require the Registered Entity to attest to the validity and truthfulness of the data supplied to each data request.

If the Reliability Standard does not specify the advance notice period, a request is normally issued with no less than twenty (20) days advance notice.

Failure of a Registered Entity to submit requested data on the date specified by the Compliance Enforcement Authority will result in an escalation of the enforcement process as described in SERC Implementing Procedure 5.0: Consolidated Compliance Enforcement Tracking.

### **4.9 Team Notice and Objections to CVI Team Members**

- 4.9.1. SERC will provide the Registered Entity subject to the CVI the Team member list and the Team member's recent employment history as soon as practicable after the team is formed and whenever there are changes to team membership.
- 4.9.2. The Registered Entity may object to any individual on the investigation team in accordance with CMEP Section 3.1.5; however, the Registered Entity may not object to participation by NERC or FERC staff on the investigation team.
- 4.9.3. Within ten (10) business days of receiving the notification of CVI Team or a change to the CVI Team, a Registered Entity subject to an investigation may object to any member of the investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Nothing in this paragraph shall be read to limit the participation of NERC or FERC staff in the CVI.
- 4.9.4. Such objections must be provided to SERC in writing within such ten (10) business day period.
- 4.9.5. SERC will make a final determination as to whether the individual will participate in the investigation of the Registered Entity.

### **4.10 On-site Interviews**

- 4.10.1. If necessary, the CVI may include an on-site visit with interviews of the appropriate personnel and review of data.
- 4.10.2. SERC may enlist the services of a court recorder to record a transcript of the interviews.
- 4.10.3. SERC may, at its discretion, require the Registered Entity to attest to the validity and truthfulness of the data supplied to each data request.
- 4.10.4. SERC may, at its discretion, choose to depose certain employees of the Registered Entity in addition to or in place of in-person interviews.

### **4.11 Determination and Additional Data Requests**

SERC will review available information and information supplied by the Registered Entity in response to RFI(s) to determine compliance with the Reliability Standards and may request additional data and/or information if necessary for a complete assessment

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or to demonstrate compliance in accordance with paragraph 4.8 above.

### **4.12 Verification of Entity Submitted Data**

SERC may require the Registered Entity:

- To provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to SERC's requests for documents and information; and
- To produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the subject matter of the CVI to provide testimony under oath concerning the matters under investigation.

### **4.13 Assessment**

SERC completes the assessment of compliance with the Reliability Standards, prepares, and distributes the report, and notifies the Registered Entity.

### **4.14 Conclusion of CVI**

4.14.1.If SERC concludes that a reasonable basis exists for believing a violation of a Reliability Standard has occurred, it will notify the Registered Entity and commence enforcement actions leading to issuance of a Notice of Alleged Violation. SERC will also notify NERC following the processes set forth in Procedure 8.0, Reporting and Disclosure..

4.14.2.If SERC determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the investigation has been completed and that no further action is warranted.

4.14.3.NERC will notify FERC of the results of the CVI and whether or not further actions will be initiated.

### **4.15 Confidential Information**

SERC will treat all alleged violations and matters related to a Compliance Violation Investigation, including the status of the CVI, as confidential in accordance with Section 1500 of the NERC Rules of Procedure, unless FERC directs that a Compliance Violation Investigation should be public or that certain information obtained in the Compliance Violation Investigation should be publicly disclosed.

Information that would jeopardize bulk power system reliability, including information relating to a Cyber Security Incident will be identified and protected from public disclosure as critical energy infrastructure information in accordance with Section 1500 of the NERC Rules of Procedure

Confirmed Violations resulting from a Compliance Violation Investigation will be made

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public. Any Entity seeking to protect information as confidential shall follow the procedures of Section 1500 of the NERC Rules of Procedure. This information may result from a CVI, compliance audits, and proceedings concerning an alleged violation or proposed penalty or sanction.

### **4.16 Disclosure of Compliance Violation Investigation**

All CVIs are to be non-public unless NERC or SERC determines a need to conduct a public investigation. Advance authorization from NERC is required to make public any Compliance Violation Investigation, or any information relating to a CVI, or to permit interventions when determining whether to impose a penalty. This prohibition on making public any CVI does not prohibit NERC or SERC from publicly disclosing the initiation of or results from an analysis of a significant system event under NERC Rules of Procedure (ROP) Section 807 or of off-normal events or system performance under NERC ROP Section 808, so long as specific allegations or conclusions regarding alleged violations of Reliability Standards are not included in such disclosures.

### **4.17 Public Posting**

When the affected bulk power system owner, operator, or user either agrees with the violation(s) or report, or the time for submitting an appeal is passed, or all appeals processes are complete, NERC shall publicly post each confirmed violation, penalty or sanction, and final compliance audit or Compliance Violation Investigation report on its Web site.