

# **SERC Compliance Monitoring and Enforcement Program**

## **Implementation Procedure 5.4 Settlement Process**



## Revision History

Revision	Date	Originator	Comments
0	May 31, 2007	M. Ladrow	Document Origination.
1	April 21, 2009	M. Ladrow	Revisions to conform with December 19, 2008 CMEP Revisions

## Cross Reference Table

The procedures listed in the table below refer to this procedure, 5.4 Settlement Process. As revisions are made to 5.4 Settlement Process, 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

## 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 settle an alleged violation of an approved Reliability Standard.

As set forth in NERC's Rules of Procedure, Section 403.19, Sections 3.2-3.4 of Appendix 4B of the Rules of Procedure, and Section 5.4 of NERC's Compliance Monitoring and Enforcement Program (CMEP) document, Registered Entities may elect and request a settlement of an alleged violation of an approved Reliability Standard at any time, including prior to the issuance of a notice of alleged violation and sanction, until a Notice of Penalty is filed with FERC.

This document identifies and discusses the processes and principles to be followed in a penalty settlement to resolve an alleged violation or violations of approved Reliability Standards. This document notes but does not otherwise address the progression of actions and steps that SERC will follow to process a violation from its initial discovery as a possible violation, through to its possible final determination as a post-appeal confirmed violation. (See SERC Implementation Procedure 5.0, Consolidated Compliance Enforcement Tracking for the normal progression of compliance enforcement actions.)

Nothing contained within this document will prevent a party to a compliance action from seeking a settlement of a non-compliance issue.

### 2.0 Responsibilities

SERC Compliance Director or designee will be responsible for settlement negotiations consistent with this procedure.

### 3.0 References

- FERC's Revised Policy Statement on Enforcement, issued May 15, 2008 (123 FERC ¶ 61,156)
- FERC's Policy Statement on Compliance, issued October 16, 2008 (125 FERC ¶ 61,058)
- U.S Securities and Exchange Commission (SEC) Release No. 44969 under the Securities and Exchange Act of 1934, issued on October 23 2001
- SERC Reliability Corporation Delegation Agreement
- NERC Rules of Procedure Section 403.19
- NERC Rules of Procedure Appendix 4B
- SERC CMEP Sections 5.4 and 8.0

### **4.0 Procedure Steps**

#### **4.1 Settlements of Compliance Violations**

As set out in NERC Rules of Procedure Section 403 paragraph 19, violations of Reliability Standards may be dealt with through settlements reached between SERC and the Registered Entity or entities to which a possible, alleged, or confirmed violation is attributed. Any provisions made within a settlement regarding penalties, sanctions, or mitigation actions can supersede any corresponding penalties, sanctions and mitigation actions that would otherwise be determined pursuant to the SERC Penalties and Sanctions Procedure.

#### **4.2 Objective of Settlement Proceeding**

The objective of the SERC Settlement Procedure is to efficiently settle alleged violations of Reliability Standards in a fair, equitable and consistent method without the time and resource drain on all parties involved that might otherwise be realized through a hearing and appeals process. It is SERC's intent to be consistent in dealing with non-compliance issues through this Settlement Procedure and therefore SERC will review, as appropriate, other regional and cross-regional compliance actions with similar circumstances as input toward the settlement decision. However, no settlement reached through this process shall be used as a binding precedent in any other settlement proceeding or in any other compliance action. SERC will consider the totality of the individual circumstances of each settlement when determining a fair and equitable settlement.

#### **4.3 Request for Settlement of Penalty, Sanction or Mitigation Action**

An alleged violator can request SERC to enter into a settlement negotiations at any time, including prior to the issuance of a notice of alleged violation and sanction, until a Notice of Penalty is filed with FERC. The request to enter settlement negotiations shall be in writing from an officer of the alleged violator, on official letterhead, and shall be addressed and delivered to the SERC Compliance Director. The SERC Compliance Director will notify the SERC President and Board Compliance Committee (BCC) as well as NERC that the Registered Entity has initiated settlement discussion.

#### **4.4 Settlement Offer Shall Conform to Procedure**

A Registered Entity making an offer of settlement shall do so in conformity with the provisions of NERC's Rule of Procedure 403.19 and this SERC Settlement Procedure and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the subject alleged violation or violations.

#### **4.5 Content of Settlement Request Letter**

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Any letter from an officer of an alleged violator seeking settlement negotiations shall be clearly marked as a request for settlement and will include, at a minimum, the following information:

- the Registered Entity's legal name;
- the Registered Entity's address of record;
- a statement of facts surrounding the alleged violation of a Reliability Standard;
- the violation or violations which the Registered Entity proposes to enter into settlement;
- copies of, or references to, any document, testimony, or exhibit, including record citations if there is a record, and any other matters that the alleged violator considers relevant to the offer of settlement.
- the name of the individual authorized to represent the Registered Entity in the settlement negotiation process.

### **4.6 Settlement Effect on Continuation of Determination of Penalties, Sanctions**

Until a settlement is finalized, or SERC unilaterally determines otherwise, SERC may continue activities and actions toward the determination and levying of a penalty, sanction, or mitigation action that would otherwise be applicable pursuant to the Penalties and Sanctions Procedure, or that will be applicable if the settlement is not finalized. In such event, the alleged violator is required to participate in the Penalties and Sanctions Procedure.

### **4.7 NERC Participation in Settlements**

NERC may participate in any settlement negotiation undertaken by SERC for the purpose of settling an alleged violation of approved Reliability Standards and related enforcement action. NERC will be informed by the appropriate SERC personnel when Settlement Negotiations are initiated, whether before or after a formal Notice of Hearing has been issued.

However, NERC participation must be through representatives who will not have decision-making authority or influence in any appeal of a Final Order issued in a hearing to address the alleged violation that is the subject of the settlement discussions. Also, NERC representatives must employ appropriate safeguards to ensure that any statements made during the discussions are not revealed to any individual who does or may have decision-making authority or influence in an appeal of the Final Order issued in any such proceeding.

### **4.8 SERC Approval of Settlement**

The SERC Compliance Director will review the settlement for consistency and to ensure

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no settlement will result in a violation of NERC or SERC Reliability Standards. Once approved by the SERC Compliance Director, the settlement will be forwarded to the BCC for approval. The alleged violator will be notified of any settlement rejected by SERC Compliance Director or BCC and will be notified of the reason for the rejection. Any settlement not approved by SERC staff or BCC will either continue with additional negotiation between SERC and the alleged violator in an effort to resolve SERC's or BCC's objections with the settlement or, in the absence of settlement agreeable to all parties, will continue through the Penalties and Sanctions Procedure as if no settlement negotiation occurred.

In the instance of a settlement rejected by SERC Compliance Director or BCC where enforcement proceedings continue due to the inability of the parties to agree to a settlement, the alleged violator shall not be prejudiced by the rejection in remaining enforcement proceedings; the rejected settlement shall not constitute a part of the record in any proceeding against the alleged violator.

### 4.9 NERC Approval of Settlement

SERC will submit all BCC-approved settlements to NERC, within 10 days of BCC approval, through the NERC compliance tracking system with an email to [compliance@nerc.net](mailto:compliance@nerc.net) and copies to NERC's Vice President of Compliance and NERC's legal counsel providing notice of the submittal of the settlement agreement.

NERC retains the right to approve or reject all settlements reached between SERC and any alleged violators. SERC will present all settlements to NERC and represent the settlement to NERC in good faith, consistent with the spirit of the negotiation of the settlement. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify SERC and the alleged violator of changes to the settlement that would result in approval.

Any settlement not approved by NERC will either continue with additional negotiation between SERC and the alleged violator in an effort to resolve NERC's objections with the settlement or, in the absence of settlement agreeable to all parties, will continue through the Penalties and Sanctions Procedure as if no settlement negotiation occurred.

In the instance of a settlement rejected by NERC where enforcement proceedings continue due to the inability of the parties to agree to a settlement, the alleged violator shall not be prejudiced by the rejection in remaining enforcement proceedings; the rejected settlement shall not constitute a part of the record in any proceeding against the alleged violator.

### **4.10 NERC Acceptance Concludes Compliance Action**

To the extent that SERC has elected, pursuant to Section 4.4 of these Settlement Procedures, to continue activities and actions towards the determination and levying of a penalty, sanction, or mitigation action that would otherwise be applicable pursuant to Penalties and Sanctions Procedure, such activities and actions will cease once a settlement is accepted by NERC.

### **4.11 NERC Approval of Settlement and Forfeiture of Additional Remedies**

Any settlement reached between SERC and an alleged violator and approved by NERC will require the forfeiture of any additional remedies to which the alleged violator might otherwise be entitled. Specifically, the alleged violator will forfeit the right to appeals and additional hearings related to the violation(s) settled through the settlement agreement.

### **4.12 Confidentiality of Negotiations**

All settlements and negotiations will be confidential and will only be shared within SERC, within the alleged violator's company, with any required and relevant contractors or counsel, and with NERC, on a need to know basis until such time as the settlement is approved by NERC.

### **4.13 Disclosure of Settlement**

Once NERC's Board of Trustees Compliance Committee has approved a settlement, NERC will prepare a notice of penalty filing with FERC. In all cases, NERC will publicly post the complete settlement agreement along with its mitigation plan and any appendices at the point when the matter is filed with FERC as a notice of penalty regardless of whether the "violator" admits to the violation in the settlement agreement.

### **4.14 Requirements of Any Settlement**

SERC shall consider all relevant facts in the settlement. Any settlement must ensure that the reliability of the bulk power system will not be compromised by the settlement and that a violation of Reliability Standards will not occur as a result of the settlement. All settlement agreements shall include a mitigation plan, signed by an authorized representative of the Registered Entity and developed in accordance with SERC Implementation Procedure 9.0, Mitigation of Violations of Reliability Standards.

### **4.15 Conduct of Settlement Proceedings**

SERC shall not conclude any settlement agreement terms or conditions until after SERC staff has completed its determination of alleged violation in accordance with SERC Implementation Procedure 5.0, Consolidated Compliance Enforcement Tracking.

Typically, an initial settlement conference will be held at either the SERC regional office or at a location determined by the SERC Compliance Director after due consideration to the alleged violator's preferences and location.

At the sole discretion of the SERC Compliance Director, the initial conference may be held in a format other than an "on-location" meeting; the SERC Compliance Director shall consider the seriousness of the alleged violation, the depth of the required discourse, and other factors deemed relevant by the Compliance Director when determining the format of the initial and subsequent conferences.

The settlement conference will be attended by the SERC Compliance Director or his designee, the person named as the alleged violator's designee named in Section 4.7.6, above.

The SERC Compliance Director will designate, from SERC staff, a secretary to attend the conference for the purpose of maintaining a written record of the discussions.

Additional staff from both SERC and the alleged violator will attend the conference, as required, to support SERC or the Registered Entity's position, respectively; superfluous staff should be avoided to facilitate open and unimpeded discussion between the principal negotiators.

Subsequent conferences can be held in a format deemed most appropriate by the Compliance Director after due consideration of the alleged violator's preferences.