

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION



Reliability Standards & NERC Enforcement

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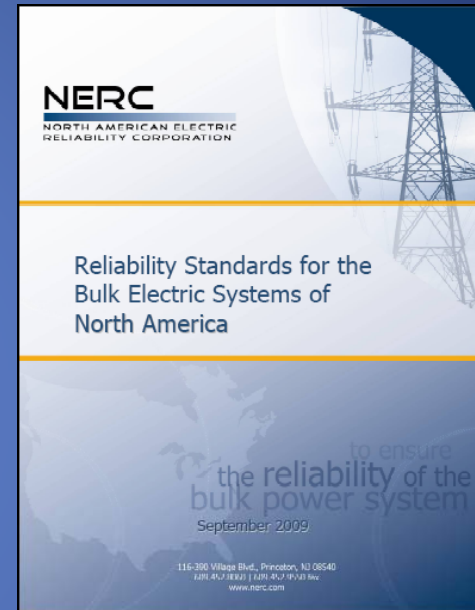
Agenda



- **NERC Reliability Standards**
 - Background
 - Reliability Standards Development Process
 - Transmission Relay Loadability Reliability Standard
- What concerns Registered Entities
- How Registered Entities survive a NERC audit

NERC Reliability Standards

- In EAct 2005, Congress mandated the creation of an “Electric Reliability Organization” (ERO) and the establishment of mandatory reliability standards.
- EAct 2005 and Section 215 of the Federal Power Act provide that all users, owners and operators of the Bulk Electric System must comply with the reliability standards.



NERC Reliability Standards continued

- In its initial submittal as the ERO, NERC filed 102 Reliability Standards with FERC on April 4, 2006.
- Since then, NERC has made a number of revisions to existing standards and proposed and implemented several new standards.
 - Most recently, NERC has filed changes to its Critical Infrastructure Protection standards.
 - FERC has also issued a Notice of Proposed Rulemaking regarding NERC's proposed transmission relay loadability reliability standard.

NERC Reliability Standards continued

- NERC has organized its Reliability Standards into thirteen different categories:
 - Resource and Demand Balancing (BAL)
 - Communications (COM)
 - Critical Infrastructure Protection (CIP)
 - Emergency Preparedness and Operations (EOP)
 - Facilities Design, Connections and Maintenance (FAC)
 - Interchange Scheduling and Coordination (INT)

NERC Reliability Standards continued



- Interconnection Reliability and Operations (IRO)
- Modeling, Data and Analysis (MOD)
- Nuclear (NUC)
- Personnel Performance, Training and Qualifications (PER)
- Protection and Control (PRC)
- Transmission Operations (TOP)
- Voltage and Reactive (VAR)

NERC Reliability Standards continued

- NERC has a Reliability Standards Development Plan in place that NERC staff uses to identify and prioritize the reliability standard development projects in the immediate three-year horizon.
- Each year, NERC seeks input for improving the Plan:
 - Perceived gaps in the set of NERC reliability standards and recommendations for eliminating the perceived gaps;
 - Priorities of the projects and recommendations for adjusting the timing of individual projects; and
 - Identification of potential future projects for addressing changes in or development of new reliability standards.

NERC Reliability Standards continued

- Any stakeholder can submit a Standards Authorization Request (SAR) to the standards process manager.
- Any person with a direct and material interest has a right to participate in the Standards Development Process by:
 - Receiving timely notice of opportunities for participation.
 - Expressing an opinion and its basis.
 - Having that position considered.
 - Appealing if adversely affected.

Transmission Relay Loadability

- On May 21, FERC issued a Notice of Proposed Rule-making (NOPR) concerning NERC's Transmission Relay Loadability Reliability Standard (PRC-023).
- If approved, PRC-023 would obligate certain REs to set their load-responsive phase protective relays according to specific criteria to ensure that the relays reliably detect and protect the electric network from all fault conditions without limiting transmission loadability or interfering with system operators' ability to protect system reliability.

Transmission Relay Loadability continued

- Areas under discussion:
 - Applicability of PRC-023 to entities with facilities operated between 100 kV and 200 kV and to facilities operated below 100 kV that are critical to the Bulk Electric System.
 - Generator step-up and auxiliary transformers.
 - Zone 3/Zone 2 relays applied as remote circuit breaker failure and backup protections.
 - Protective relays operating unnecessarily due to stable power swings.
 - Protection systems that should be excluded from the Standard.

Agenda

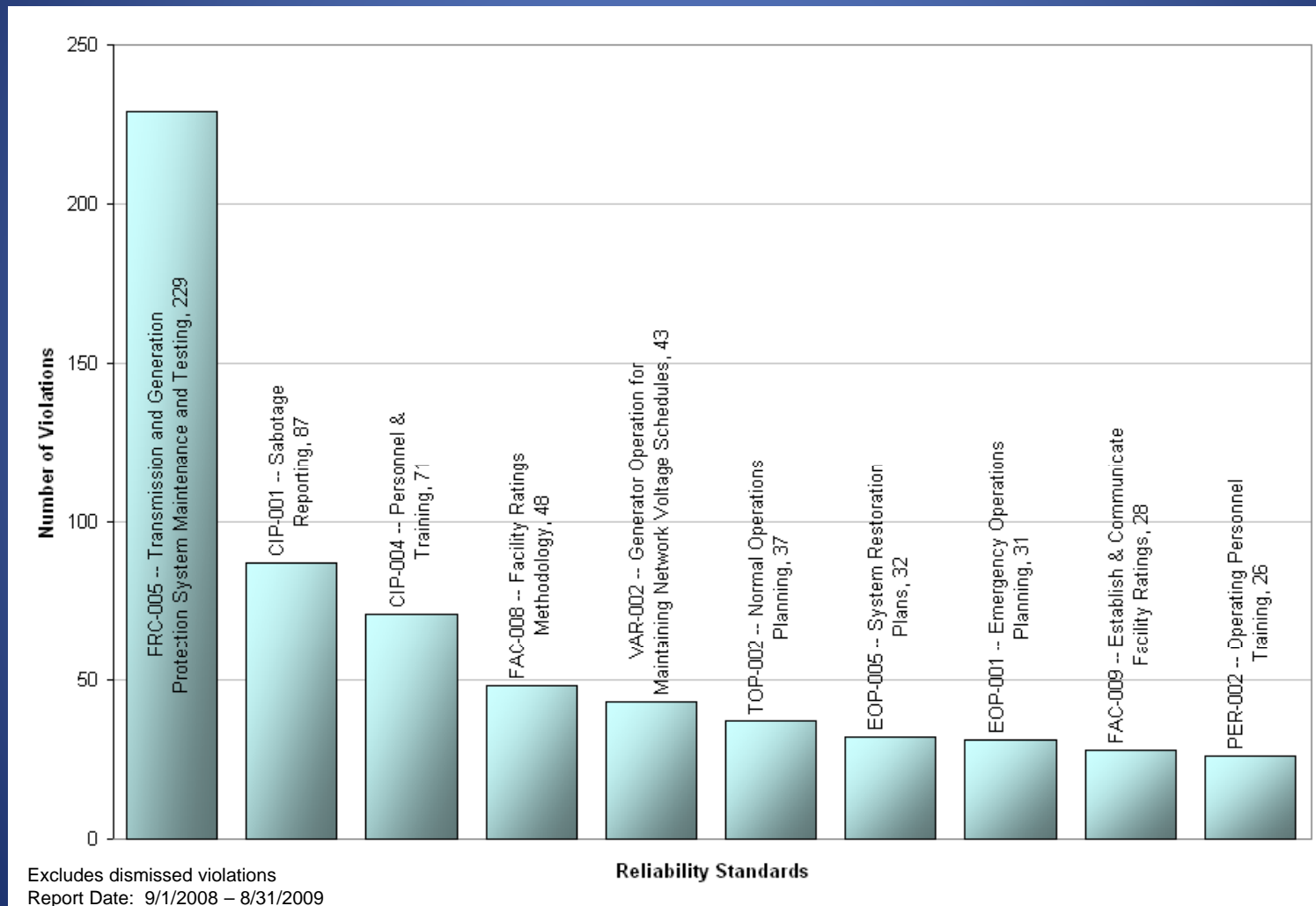


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REs Are Paying Attention to Compliance with the Standards

- Registered Entities have a lot to worry about:
 - NERC has the ability to levy both monetary and non-monetary penalties for violations of FERC-approved Reliability Standards.
 - NERC can assess a penalty of up to one million dollars per day per violation.
- Since its penalty authority first became effective, NERC has issued \$1,561,000 in monetary penalties.
- Recently, NERC has begun cracking down on violations, issuing eight Notices of Penalty totaling \$553,000 in the last month.

Top 10 FERC Enforceable Standards



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The NERC Enforcement Process

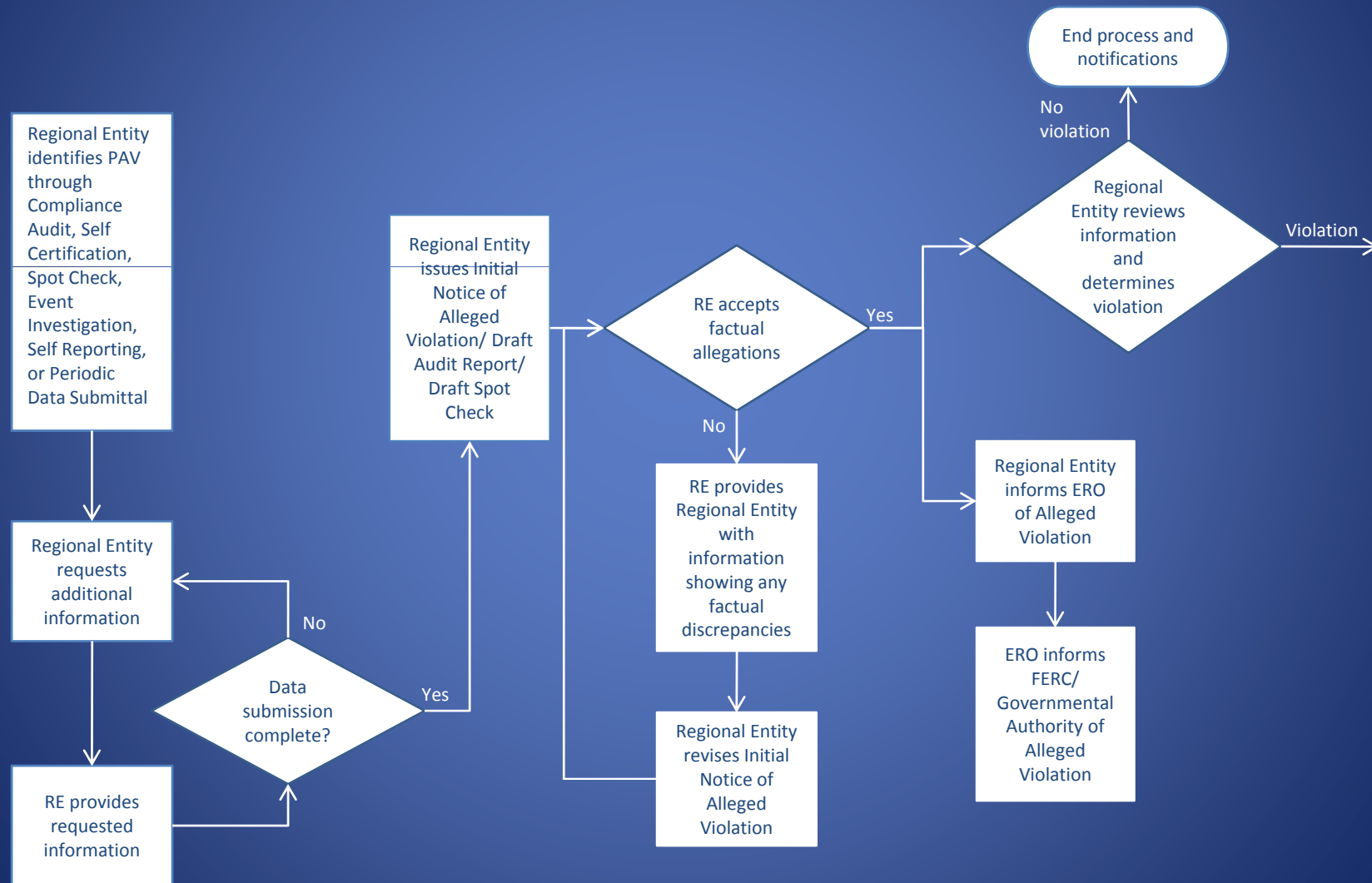
- The process of resolving a Potential Alleged Violation can take more than a year and involve hundreds of hours of time.
- With three levels of de novo administrative review (Regional Entity, NERC and FERC), opportunities to settle or contest the Regional Entity's actions at numerous points and possible court appeals, the process can be extremely complex.

How REs Survive an Audit

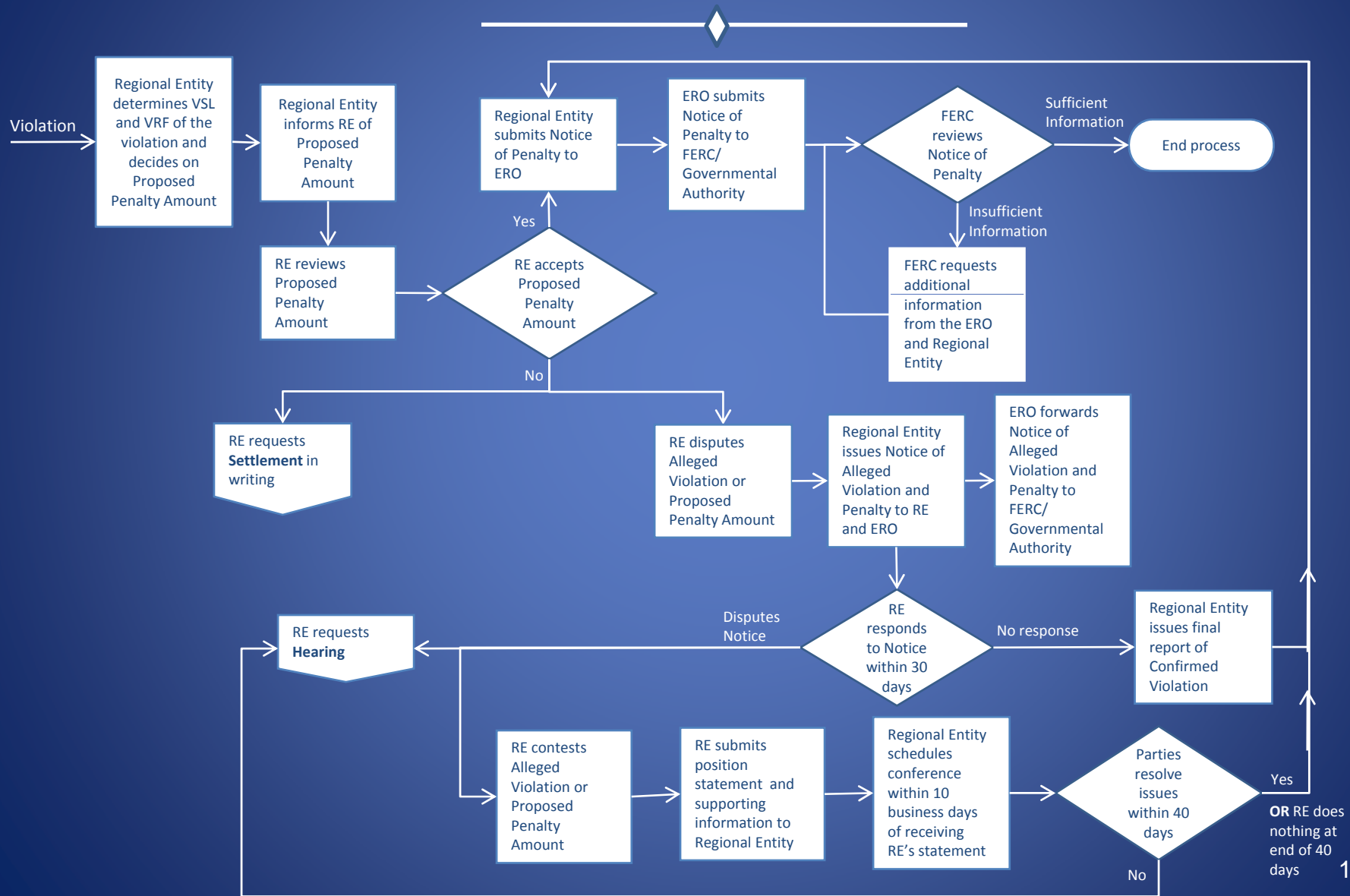


- The enforcement, settlement and hearing process can ruin a Registered Entity's budget for legal expense.
- FERC is closely monitoring NERC and Regional Entity enforcement actions, and expects to become actively involved in the future. FERC appears to believe that penalties are not large enough.

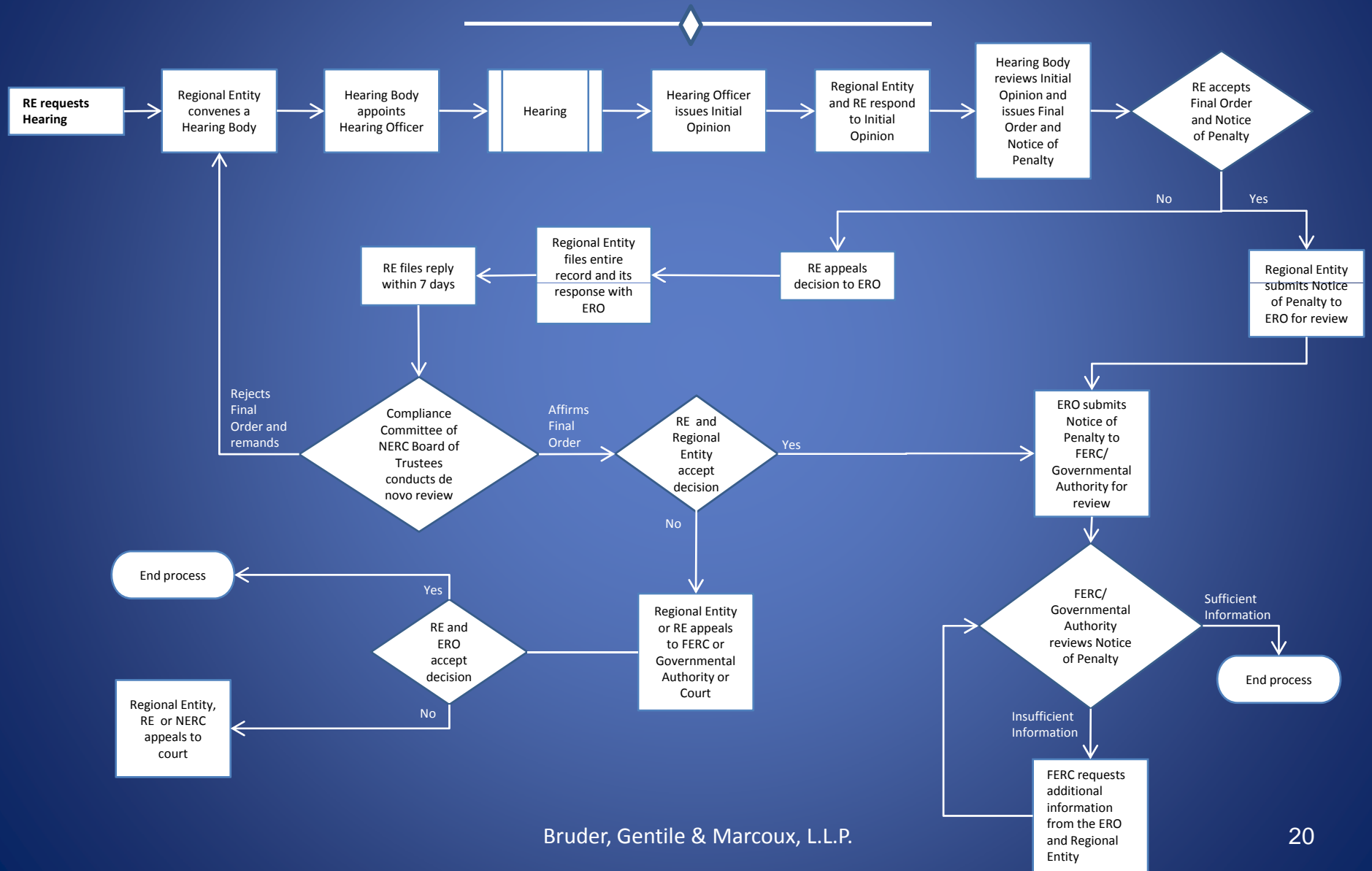
NERC Enforcement Process



NERC Enforcement Process continued



NERC Hearing Process



Concentrate on Standards That Are Violated Most Frequently

- Through August 31, 2009, NERC submitted to FERC 72 Notices of Penalty for 188 violations of 23 Reliability Standards.
 - 68 violations of CIP-001, Sabotage Reporting.
 - 30 violations of PRC-005, Transmission and Generation Protection System Maintenance and Testing.
 - 21 violations of FAC-008, Facilities Rating Methodology.
 - 16 violations of FAC-009, Establish and Communicate Facility Ratings.
 - 9 violations of PER-002, Operating Personnel Training.
 - 44 violations of more than 120 other Reliability Standards.

Prepare Carefully for the Audit

- Using consultants to help prepare for an audit can reduce the likelihood of violations, but is not a guarantee.
- Failure to document compliance is nearly as bad as failure to comply.
- Counsel need to be closely involved in audit preparations as well as pre-audit compliance efforts. Not all engineers are equally skilled at interpreting the Reliability Standards.

Focus on Maintaining a Robust Compliance Program

- FERC has emphasized the importance of a robust compliance program, and stated that multiple violations may indicate a lack of a compliance program or overall lack of a compliance culture, which can affect penalty assessments.

Self Report All Violations

- Self-reporting violations helps the RE to demonstrate to the Regional Entity that it has a pro-active compliance program.
- Pro-active compliance programs are a factor that the Regional Entity considers in establishing penalties.
- FERC has stated that Self-Reports, which are voluntary disclosures, support reductions in penalty amounts; but self-certifications, which are required responses to Regional Entity inquiries, do not.

Be Prepared For A Long Process

- The Regional Entity will issue a draft report specifying the Potential Alleged Violation and notify NERC.
- The Regional Entity may submit informal requests to the RE. The information-gathering process may take 1 – 3 months.
- The Regional Entity will schedule a telephone conference in which it summarizes its findings and states its proposed penalty based on the Violation Risk Factor and Violation Severity Level.

NERC Base Penalty Table



	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

NOTE: This table describes the penalties that could be applied for each day that a violation continues, subject to considerations regarding frequency and duration of the violation.

Be Prepared For A Long Process

continued

- The RE may accept the proposed penalty, request settlement negotiations, or request a hearing.
- Settlement:
 - Settlement is not a means of getting the Regional Entity to withdraw an alleged violation; that is done in the hearing process.
 - An RE may state that it neither admits nor denies a violation in a settlement agreement. It may not contest whether the violation actually occurred.
 - The Regional Entity will not finally approve a settlement until the RE certifies completion of its Mitigation Plan.

Be Prepared For A Long Process

continued



- If the Parties reach settlement, NERC and FERC must review the agreement.
 - Either NERC or FERC can reject or require modification of the settlement agreement.
 - If this happens, either the RE or the Regional Entity can object, in which case negotiations begin again.

Be Prepared For A Long Process

continued

- If there is no settlement, the Regional Entity issues a public Notice of Alleged Violation and Penalty.
 - If the RE does not dispute the Alleged Violation or the penalty, the Regional Entity issues a report of Confirmed Violation and NERC files it with FERC.
 - If the RE disputes the Alleged Violation or the penalty amount, the parties can either resolve the issue within 40 days or go to hearing.

Be Prepared For A Long Process

continued



- The parties may adopt either shortened hearing procedures – essentially a paper hearing – (except in WECC, which has obtained FERC approval to not use them) or full hearing procedures with testimony, evidence and briefs. The initial decision is reviewed de novo by the Regional Entity’s hearing body.
- The hearing body’s decision is subject to de novo review by NERC’s Compliance Committee and by FERC. Any changes by NERC or a remand by FERC may result in reopening the proceeding.

Prepare and Submit a Mitigation Plan to Address All Alleged Violations

- Regardless of whether the RE intends to contest an Alleged Violation, it should begin work on addressing whatever problems the Regional Entity identifies.
- Speedy work on a Mitigation Plan can demonstrate willingness to cooperate and a pro-active approach to compliance, which can affect the penalty amount.
- Submitting a Mitigation Plan does not result in waiver of the right to contest the Regional Entity's decision.

Ensure That the Mitigation Plan is Effective

- The RE must follow the Regional Entity's format for Mitigation Plans and respond to all questions.
 - It can't re-argue whether a violation occurred, but. . .
 - It can discuss whether the violation had a significant impact on reliability of the Bulk Electric System.
- The Mitigation Plan must follow NERC's rules.
- The plan must correct the alleged violations. The RE will be required to certify completion and provide convincing documentation.
- If NERC finds that the plan is ineffective or was not fully implemented, the penalty will increase.

REs Can Propose “Above and Beyond” Measures

- “Above and beyond” measures can include adopting a “best practice” that is not required by the Reliability Standard, industry outreach and education activities, or other actions that enhance reliability of the Registered Entity’s system or the Bulk Electric System.
- Actions that do more than simply correct a violation can reduce penalty amounts.
- “Above and beyond” measures can be a significant negotiating tool in settlement discussions.

There Are Variations Among and Within the Regional Entities

- The NERC Enforcement process will not mature for several years. During that time, individual auditors within Regional Entities almost certainly will have differing views as to what constitutes a violation.
- Regional Entities are interpreting Reliability Standards differently.
- Also, Regional Entities adopt regional standards that expand upon specific NERC Standards and may differ from region to region.
- The Regional Entities also vary in the size of penalties they assess.

Questions

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