

EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of Texas Regional Entity

The Texas Regional Entity, a⁴ division of Electric Reliability Council of Texas, Inc. (~~TRE~~⁵ Texas RE),⁶ will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure (NERC CMEP)⁷) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within ~~TRE~~⁸ Texas RE's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

A. Hearing Body. ~~TRE~~¹⁰ Texas RE¹¹ will ~~normally~~¹² use the Public Utility Commission of Texas (PUCT) as its Hearing Body, and the PUCT (as Hearing Body) will issue recommendations to the ~~TRE~~¹³ Texas RE¹⁴ Chief Compliance Officer (~~CCO~~)¹⁵ who will make final decisions following regional hearings of compliance matters. The PUCT has extensive experience in conducting contested case hearings and other adjudicatory proceedings in a manner that assures due process of law to all participants. ~~TRE~~¹⁶ Texas RE¹⁷ intends to rely upon the PUCT's experience and expertise in conducting the hearing process under the Delegation Agreement. ~~TRE~~¹⁸ Texas RE¹⁹ believes that it is more efficient and cost-effective to use existing PUCT procedures than to attempt to establish a redundant hearing process within ~~TRE~~²⁰ Texas RE²¹. The PUCT is uniquely well-positioned to perform this function for the ERCOT Region since electric utilities operating in the ERCOT Region do not synchronously interconnect with electric utilities operating outside of Texas, and ERCOT market participants have experience in participating in PUCT proceedings.

B. Public Hearings. ~~TRE requests that it be allowed to have public hearings by the~~²² The²³ PUCT as ~~its Hearing Body. Having the PUCT act as Hearing Body~~²⁴ Hearing Body will hold public hearings on all matters referred to it for hearing and recommendation. The PUCT's performance of Hearing Body responsibilities²⁵ is fully consistent with the NERC Rules of Procedure and with Section 39.7 of FERC Order 672, with the exception of Section 39.7(b)(4), which requires "[e]ach violation or alleged violation [to] be treated as nonpublic until the matter is filed with [FERC] as a notice of penalty or resolved by an admission ... or by a settlement or other negotiated disposition." Because the PUCT is a "governmental body" under the Texas Open Meetings Act

[those contemplated under this Exhibit D](#),³⁴ are conducted as open meetings, steps are taken to prevent the disclosure of confidential information during the hearing process. Direct testimony in such cases is generally presented in written question and answer format, with any confidential information redacted, filed under seal and provided to parties pursuant to a protective order.

Under the Texas Public Utilities Regulatory Act (PURA) §39.151(j), market participants in the ERCOT market are required to comply with all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures ~~established by~~³⁵ERCOT [establishes](#)³⁶. The PUCT is given authority to enforce this obligation through the imposition of penalties, revocation of certifications or other means. In any enforcement proceeding under PURA, [PUCT](#)³⁷ ~~deliberations by the PUCT~~³⁸ are ~~held as~~³⁹ [conducted in](#)⁴⁰ an open meeting in accordance with the procedures outlined above. ERCOT is thus unlike other power regions that may be implementing an enforcement mechanism for the first time. The history of public availability of this information in the ERCOT power region argues in favor of the continued public availability of information considered in PUCT enforcement hearings.

Moreover, elsewhere in Order [No.](#)⁴¹ 672, FERC stated that: “If the ERO or a Regional Entity wishes to conduct a public investigation, enforcement audit or permit interventions when determining whether to impose a penalty, the ERO or the Regional Entity must receive advance authorization from the Commission.”¹

~~In order to allow the PUCT to conduct enforcement hearings as TRE’s Hearing Body, TRE seeks authorization from NERC and FERC to conduct the enforcement hearings as public proceedings. The revision requested here is intended to reflect that, pursuant to the FERC’s declaration in Order 672, the obligation contained in Section 6(c) may be excused by express authorization from FERC~~⁴² [response to Texas RE’s request to be permitted to hold public hearings as outlined herein, FERC issued *In the matter of Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT*, Docket No. RR07-1-000, Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements and Accepting Regional Entity 2007 Business Plans, 119 FERC 61,060 at ¶253 \(Issued April 19, 2007\)\(Delegation Agreement Acceptance Order\). The Delegation Agreement Acceptance Order provides for open hearings as requested](#)⁴³.

D. Hearing Administration. ~~TRE requests that~~⁴⁴ PUCT, as Hearing Body, ~~be~~⁴⁵ [is](#)⁴⁶ authorized to hear cases and render its recommendations through the PUCT Commissioners. ~~TRE also requests that the~~⁴⁷ [The](#)⁴⁸ Hearing Body ~~be~~⁴⁹ [is](#)⁵⁰ authorized to use the PUCT staff of Administrative Law Judges (ALJs) and other trained employees to establish the procedures and timelines that will be followed in the regional hearings. ~~These individuals would~~⁵¹ [including the conduct of hearings and the preparation of draft](#)

~~found this procedure to be very effective in establishing an orderly and expeditious schedule for the resolution of contested matters. TRE believes the same structure would be helpful in conducting hearings concerning alleged violations of reliability standards.~~⁵⁸ take evidence, prepare a draft recommendation, and perform all tasks delegated from the PUCT, except the final rendition and approval of the final recommendation to be provided to the Chief Compliance Officer.⁵⁹

E. Detailed Hearing Procedures. The details of the proposed Texas Regional Entity Regional Hearing Process is attached hereto as ~~Appendix A.~~ ~~Appendix A reflects~~⁶⁰ Attachment 1 and Attachment 2. Attachment 1 consists of a summary of⁶¹ the NERC ~~Compliance Monitoring and Enforcement Program (“CMEP”)~~⁶² CMEP⁶³ procedures that must be altered to accommodate ~~TRE~~⁶⁴ Texas RE⁶⁵'s request to have the PUCT act as its Hearing Body. ~~Appendix A is a revised version of~~⁶⁶ Attachment 1 is a summary of necessary revisions to⁶⁷ Attachment 2 of the CMEP, and together with Attachment 2 hereto and the incorporated PUCT Chapter 22 Procedural Rules,⁶⁸ provides the details of the ~~proposed~~⁶⁹ regional hearing process ~~by TRE~~⁷⁰ Texas RE has adopted⁷¹.

In addition to the requested modifications to procedures set forth in Attachment 2 of the CMEP, ~~TRE~~⁷² Texas RE⁷³ also ~~requests that it be allowed to vary~~⁷⁴ varies⁷⁵ from Section 5.5 of the main body of the CMEP, ~~to allow~~⁷⁶ allowing⁷⁷ the ~~CCO~~⁷⁸ Chief Compliance Officer⁷⁹'s decision (instead of the hearing body's decision) be appealed to NERC. This language is contained as subsection 9.2 ~~in Appendix A~~⁸⁰ of Attachment 1⁸¹: “The Registered Entity may appeal the ~~CCO~~⁸² Chief Compliance Officer⁸³'s decision to NERC, as provided for in NERC Rules of Procedure, Sections 407.3 and 410-~~“~~⁸⁴”⁸⁵

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS⁸⁶

~~TRE~~⁸⁷ E. Regional Hearing of Compliance Matters. Texas RE⁸⁸ shall establish ~~and maintain a~~⁸⁹ the PUCT as the⁹⁰ hearing body,⁹¹ with authority to conduct compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan. ~~As described above, TRE's hearing body is the PUCT, and the~~⁹² The⁹³ PUCT will issue ~~recommendations~~⁹⁴ a final recommendation⁹⁵ to the ~~CCO~~⁹⁶ Chief Compliance Officer⁹⁷ rather than final decisions.

3.0 OTHER DECISION-MAKING BODIES⁹⁸

~~Other than the PUCT, TRE does not plan to~~⁹⁹ **1.3 Other Decision-Making Bodies.**¹⁰⁰

Texas RE will not¹⁰¹ use other decision-making bodies within its compliance program.

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