

**CLARIFICATIONS PROVIDED BY THE RÉGIE DE L'ÉNERGIE (LA RÉGIE) IN RESPONSE TO
QUESTIONS FROM ÉLL AND ÉBMI DATED OCTOBER 2, 2009 REGARDING THE QUÉBEC
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM (QCMEP)**

1.0 INTRODUCTION

It is indicated here that NPCC provides the Régie with recommendations regarding the enforcement of the Reliability Standards while “taking into account Québec’s legal and regulatory environment.”

- a) **Please clarify whether NPCC comes under Québec’s statutory and judicial jurisdiction.**

Clarification: Current and future agreements with NPCC and NERC are authorized by the government in accordance with subsection 85.4 of the Act respecting the Régie de l'énergie and subsection 85.9 establishes the scope of the mandates conferred upon these bodies; i.e. to report their findings, after having given the Registered Entity an opportunity to submit observations, and to recommend application of a sanction. NPCC and NERC will ensure implementation of the Québec Compliance Monitoring and Enforcement Program (QCMEP) in accordance with the Québec Rules of Procedure (QROP) for Compliance Services, as well as the terms of the *Sanction Guide*.

1.1 DEFINITIONS

Section 1.1.7: In the definition of confirmed violation, point 2):

- a) **Why not refer to a final decision rendered by the court of last resort, instead of saying: “completed the appeal process within NERC”?**

Clarification: This is the definition used in the industry. A Confirmed Violation is one for which the Registered Entity involved has accepted the finding of the violation and does not seek a hearing with the NPCC Hearing Body, or has completed the appeal process within NERC, or has allowed the time for submitting a hearing request to NPCC or an appeal request to NERC to expire. This Confirmed Violation ends the investigation mandate assigned to NPCC and NERC. The report that is then submitted to the Régie includes findings and recommendations; the Régie will make the final determination as to whether there was a violation and will impose a sanction as applicable.

Section 1.1.22: Self-certification is defined here as “attestation (...) of compliance or non-compliance with Reliability Standards for which Self-Certification is required.”

- a) **Why is reference made to non-compliance in connection with self-certification? (also see paragraph 3, where mention is made of self-certifications and self-reporting).**

Clarification: In the French version of the document, the expression "Déclaration de conformité" will be changed to ""Déclaration sur la conformité."

Section 1.1.6: With regard to compliance violation investigation.

- a) **Please confirm that the on-site visit with interviews of the appropriate personnel has to do with the Registered Entity.**

Clarification: The Régie confirms this.

Section 1.1.19: The definition of remedial action refers to "an action (other than a penalty or sanction)."

- a) **Please explain what is meant by "other than a penalty or sanction."**

Clarification: See the *Sanction Guide* filed by the Reliability Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 9).

Section 1.1.9: This section defines the mitigation plan. It states that "a Mitigation Plan is required whenever a Registered Entity violates a Reliability Standard as determined by (...) NPCC decision."

- a) **Please clarify how this conforms to subsection 85.12 of the Act respecting the Régie de l'énergie (the "Act"), which provides that "the Régie may, on the conditions it sets, order an entity that fails to comply with a reliability standard to implement a compliance program within the time limit the Régie may specify."**

Clarification: The Registered Entity draws up a Mitigation Plan and submits it to NPCC for a recommendation to the Régie. After determining that an entity has violated a reliability standard, according to subsection 85.10 of the Act, the Régie may then proceed, pursuant to subsection 85.12 of the Act and on the conditions it sets, to order the entity in question to implement a Mitigation Plan within the time limit it sets.

2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

In the third paragraph, reference is made to an NPCC Compliance Registry and a NERC Compliance Registry.

- a) **Please indicate what information will be contained in each of these registries, if applicable.**

Clarification: See the Compliance Register filed by the Reliability Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 4).

- b) **Please provide a copy of each registry.**

Clarification: The NERC Compliance Registry is available at:

<http://www.nerc.com/page.php?cid=3|25>

The NPCC Compliance Registry is available by clicking on
Compliance>Registration at:

<http://www.npcc.org/>

- c) **Will posting these registries on the Web respect the confidentiality requirements described in the Québec Compliance Monitoring and Enforcement Program or in the Québec Rules of Procedure for Compliance Services?**

Clarification: Yes.

3.0 COMPLIANCE MONITORING AND ENFORCEMENT PROCESSES

We refer you to the third paragraph, at the top of page 4.

- a) **Are we to understand that NPCC could submit a recommendation to the Régie without giving the Registered Entity at least 20 days to submit observations, pursuant to subsection 85.9 of the Act?**

Clarification: The words "and give the Registered Entity the opportunity to submit its observations within a deadline of at least (20) days" will be added at the end of the last sentence in the 3rd paragraph of Section 3.0.

- b) **Please clarify what “hearing before NERC” refers to.**

Clarification: To the NERC “appeal” procedure. Requests for reconsideration of the findings or recommendations of the NPCC Hearing Body are addressed to NERC.

- c) **Is it the appeal process before NERC that is being referred to?**

Clarification: Yes.

3.1 COMPLIANCE AUDITS

3.1.1 COMPLIANCE AUDIT PROCESS STEPS

Page 5, fourth bullet.

- a) **Please indicate whether NPCC provides the Régie with preliminary observations concerning the Registered Entity in accordance with subsection 85.9 of the Act.**

Clarification: NPCC informs the Régie and NERC of any Alleged Violation in accordance with the provisions of Section 8.0 within the prescribed deadline for the level of the violation. The requirements of Section 85.9 do not apply for the purposes of these reports but rather starting from the sending of a Notice of Alleged Violation pursuant to Section 5.1.

- b) **Also, please explain what is meant by level 3 and 4 Alleged Violations.**

Clarification: This refers to the severity level of the violation of a standard. See the standards filed by the Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 1).

3.1.5 CONDUCT OF COMPLIANCE AUDITS

On page 6, second bullet, reference is made to anti-trust compliance guidelines.

a) Please state the statute and specific provisions this refers to.

Clarification: This refers to the "NERC Antitrust Compliance Guidelines," available by clicking on "Corporate Policies" at:

<http://www.nerc.com/page.php?cid=1|8>

3.1.6 COMPLIANCE AUDIT REPORTS

The first paragraph indicates that the draft report will be provided to the Registered Entity for comment.

a) How much time does the Registered Entity have to provide its comments, supposedly to the team that carried out the audit?

Clarification: The Registered Entity must provide its comments within 10 working days.

In the last paragraph of this section, reference is made to “critical energy infrastructure information.”

a) Please clarify what is meant by this expression.

Clarification: Critical energy infrastructures in Québec’s electric power sector have been identified by the Reliability Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 5, page 4).

b) What happens if the Registered Entity considers the information confidential and NPCC disagrees?

Clarification: The Registered Entity must ask the Régie to decide on the matter, in accordance with Section 2.2.7.3 of the QROP.

3.4 INVESTIGATIONS OF RELIABILITY STANDARD VIOLATIONS

It is stated here that Confirmed Violations resulting from a Compliance Violation Investigation will be made public.

a) Are we to understand that this information is made public even before the Régie rules on non-compliance with the standards, in accordance with subsection 85.10?

Clarification: According to the provisions of Section 1.1.7, Confirmed Violations as considered by NERC or NPCC are reported to the Régie, which, pursuant to subsection 85.10, makes a final determination whether there has been a violation and decides on further action. It is only after the Régie has made a final determination that a violation has occurred that it is made public.

3.8 COMPLAINTS

- a) **Please indicate under what circumstances NPCC might decide not to conduct the requested review.**

Clarification: When the subject of the complaint is not within a field of expertise of NPCC, or when NPCC does not have the necessary human resources at the time of the complaint.

- b) **If the complaint is submitted to NERC, please indicate how the Régie might decide to proceed itself with a review of the complaint.**

Clarification: The last sentence of the 1st paragraph is replaced with, “In addition, the Régie is informed of any Complaint received by NPCC or NERC and may determine that it will review any Complaint.”

5.0 ENFORCEMENT ACTIONS

- a) **What might lead NPCC to decide to carry out enforcement actions over and above the sanctions prescribed in the *Sanction Guide*, in light of subsection 85.9 of the Act?**

Clarification: In the 1st paragraph, the words “the appropriate Remedial Actions, and penalties and sanctions, as prescribed in the *Sanction Guide*,” will be replaced with “in accordance with the *Sanction Guide*, the appropriate Remedial Actions and penalties and sanctions.”

- b) **Will enforcement actions be part of the *Sanction Guide*?**

Clarification: The decision to include the processes and principles to be followed in the *Sanction Guide*, as well as the criteria that will be considered when determining penalties, sanctions, or remedial actions for violations of the reliability standards, will be made in case R-3699-2009. Refer to the *Sanction Guide* filed by the Reliability Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 9).

- c) **In applying the sanctions provided for in the Guide and in order to ensure consistency, as indicated in section 5, do NERC and NPCC consider comparable situations in other jurisdictions?**

Clarification: NPCC and NERC will achieve consistency in sanctions in North America by using all sanctions imposed in North America as precedents, while taking into account differences dictated by Québec’s legal and regulatory environment, as set out in the Québec *Sanction Guide* filed by the Reliability Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 9).

5.4 SETTLEMENT PROCESS

The first paragraph indicates that all settlement agreements must conform to NERC requirements.

a) **What is meant by “NERC requirements”?**

Clarification: NERC requirements are set out in the 2nd paragraph and essentially relate to consistency with previous settlements with respect to similar violations or in comparable circumstances.

5.5 NERC APPEAL PROCESS

a) **What are the procedures for appealing to NERC?**

Clarification: NERC appeal procedures are set out in Section 2.10 of the QROP.

b) **Is it necessary to consult the Rules of Procedure?**

Clarification: NERC appeal procedures are set out in Section 2.10 of the QROP.

6.3 TIMETABLE FOR COMPLETION OF MITIGATION PLANS

a) **Please clarify the following sentence at the beginning of the first paragraph: “The Mitigation Plan shall be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for which the Mitigation Plan is submitted.”**

Clarification: Certain standards, such as the Standard BAL-001-0a, stipulate a compliance monitoring period. See the standards filed by the Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 1).

6.4 SUBMISSION OF MITIGATION PLANS

a) **Please clarify or explain the first sentence, which reads: “A Mitigation Plan may be submitted at any time,” in light of the time limits described in the rest of the section.**

Clarification: In the French version, the words “n'importe quand. Elle...” are replaced by “à tout moment mais elle...”

b) **Please indicate how the time limits listed in this section are consistent with subsection 85.12 of the Act, which indicates that the Régie may order implementation of a compliance program within the time limit the Régie may specify.**

Clarification: The Registered Entity draws up a Mitigation Plan and submits it to NPCC for a recommendation to the Régie. After determining that a violation has occurred, according to subsection 85.10 of the Act, the Régie may then proceed, pursuant to subsection 85.12.

- c) **Please clarify the last sentence of the paragraph: "If the Registered Entity has not yet submitted a Mitigation Plan, any subsequent violations of the Reliability Standard identified by NPCC before it or NERC renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard."**

Clarification: This sentence is explained in the 2nd paragraph of Section 6.3.

7.0 REMEDIAL ACTION ORDERS

The sixth paragraph states that failure on the part of the Registered Entity to comply with the order may result in further Remedial Action orders or significantly increased sanctions.

- a) **Please clarify whether in this case, the Registered Entity will be heard before further Remedial Action Orders or increased sanctions are imposed.**

Clarification: The Registered Entity will be heard before the imposition of more severe sanctions, but it must comply with the Remedial Actions that have been imposed, including additional Remedial Actions, even if it is contesting them.

Paragraph 7 reads: "The Registered Entity shall proceed with implementing the Remedial Action order even if it is contesting the Remedial Action order."

- a) **Please explain this last sentence. Does this mean that the Registered Entity could be required to, say, take positive action, despite its intent to contest the proposed Remedial Action order?**

Clarification: Yes, as the purpose of a Remedial Action is to address an imminent danger that threatens the reliability of the electric power transmission system.