

**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 RULES OF PROCEDURE (QROP) FOR COMPLIANCE SERVICES**

**2.0 COMPLIANCE ENFORCEMENT**

**2.2.2 CONSISTENCY AMONG REGIONAL COMPLIANCE ENFORCEMENT PROGRAMS**

- a) **Is it NERC that sees to ensuring consistency among regional compliance enforcement programs?**

Clarification: Yes, and the Régie approves NPCC's action plan, including the annual audit plan (Sections 3.1.2 and 4.2 of the QCMEP)

- b) **Please clarify the last sentence in the paragraph, which reads: “Differences in regional entity program methods, including determination (allegation, in Québec) of violations and penalty assessment (penalty recommendation, in Québec), shall be justified on a case-by-case basis and fully documented in each regional entity delegation agreement (taking into account Québec’s legal and regulatory environment, in Québec).”**

Clarification: The regional entities, including NPCC, have been in existence for several decades. They have developed different working practices that are gradually evolving towards industry best practices. The regional entity delegation agreements, signed between NERC and each of the eight regional entities, are approved by FERC. The Régie will further clarify the paragraph by replacing (taking into account Québec’s legal and regulatory environment, in Québec)" with "and in the QROP in the case of Québec."

- c) **What are the differences that might exist among the various regional entity program methods?**

Clarification: In addition to complying with the delegation agreement signed with NERC, NPCC must also comply with the agreements signed and anticipated with NERC and the Régie. The QCMEP and the QROP are the instruments that stipulate the methods by which the mandates assigned to NPCC and NERC are to be carried out. The monitoring program and the applicable rules of procedure are consistent with the Act and involve differences in working practices.

**What is meant by regional entity delegation agreement?**

Clarification: Regional entity delegation agreements, signed between NERC and each of the eight regional entities, are approved by FERC. The one signed by NERC and NPCC is available at:

<http://www.nerc.com/page.php?cid=1|9|119|181>

**2.2.5 RESPONSIBILITY TO ALLEGE NON-COMPLIANCE, AND RECOMMENDED PENALTIES, SANCTIONS AND REMEDIAL ACTION ORDERS**

**This paragraph indicates that NERC and NPCC determine whether there is compliance or violation in the case of allegations of non-compliance with a reliability standard. However, the Québec Compliance Monitoring and Enforcement Program gives us to understand that it is essentially NPCC that makes this determination.**

a) **Please clarify.**

Clarification: NERC may need to make this determination in certain cases, such as those set out in Sections 2.1.5 (Program continuity) and 2.2.6 (Due process).

## **2.2.6 DUE PROCESS**

**The last sentence reads: "Appeals beyond the NERC process will be heard by the Régie."**

a) **Please explain what is meant by "appeals beyond the NERC process."**

Clarification: As set out in Section 2.9.8, the decisions of the NERC Compliance Committee are not subject to appeal except to the Régie, which has the power of final adjudication on Alleged Violations and applicable sanctions. Moreover, as stipulated in sections 2.2.3, 2.2.7.3 and 2.3.10, among others, the final determination on issues of reporting requirements and confidentiality will be made by the Régie.

b) **Please provide practical examples.**

Clarification: See the clarification in a) above.

## **2.3 REQUIRED ATTRIBUTES OF THE NPCC QUÉBEC COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM (NPCC'S QCMEP)**

### **2.3.2 EXERCISING RESPONSIBILITIES**

**NPCC is to carry out the compliance monitoring and enforcement program while taking into account Québec's legal and regulatory environment.**

a) **Please indicate whether NPCC will apply Québec law.**

Clarification: Current and future agreements with NPCC and NERC are approved 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*.

### **2.3.3 DELEGATION OF RESPONSIBILITIES**

**This paragraph states that NPCC shall not sub-delegate its compliance enforcement program duties to entities or persons other than NPCC compliance enforcement program staff.**

- a) Please confirm that NPCC cannot sub-delegate its duties to employees or representatives of Hydro-Québec.**

Clarification: The Régie confirms that NPCC may not sub-delegate its compliance enforcement program duties to entities or persons other than NPCC compliance enforcement program staff.

### **2.3.4 HEARINGS OF CONTESTED FINDINGS OR SANCTIONS**

- a) Please explain the following sentence: “If a stakeholder body serves as the hearing body, no two industry sectors may control any decision and no single segment may veto any matter related to compliance after recusals.”**

Clarification: In the French text, the words “Si l’organisme chargé des audiences est directement impliqué” are replaced by “Si un comité de parties prenantes sert de comité d’audience” [making it consistent with the English text] and the word “segment” is replaced by “secteur de l’industrie.”

## **PROGRAM RESOURCES**

**2.3.6.5 This paragraph states that contracting with independent consultants or others working for NPCC compliance enforcement program shall be permitted provided the individual has not received compensation from a Registered Entity being monitored for a period of at least the preceding six months.**

- a) Please explain how the period of six months was arrived at.**

Clarification: This is current industry practice in North America.

- b) Please explain why a longer period is not required.**

Clarification: This is the period that was adopted.

## **PROGRAM DESIGN**

**2.3.11.1 This paragraph refers to situations where electric power transmission system owners and operators have primary reliability responsibility.**

- a) Please clarify what is meant by “primary reliability responsibility.”**

Clarification: The standards establish which entities have a primary reliability responsibility and require organizational certification. The Reliability Coordinator, the main transmission system operators and the Balancing authority are covered by Standard PER-003-0. See the standards filed by the Coordinator in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 1).

- b) **Is Énergie La Lièvre considered an entity having primary reliability responsibility?**

Clarification: The reliability standards, adoption of which is the subject of case R-3699-2009, specify the primary entities.

- c) **What is an entity requiring organizational certification?**

Clarification: For details, refer to page 43 of this document:

[http://www.nerc.com/files/NERC\\_Rules\\_of\\_Procedure\\_EFFECTIVE\\_20080321.pdf](http://www.nerc.com/files/NERC_Rules_of_Procedure_EFFECTIVE_20080321.pdf)

### 2.3.11.3

- a) **Please confirm that this refers only to the standards that are applicable to the Registered Entity and not all Québec reliability standards.**

Clarification: The Régie confirms this.

### 2.3.14 CONFIDENTIALITY OF COMPLIANCE AUDITS AND COMPLIANCE VIOLATION INVESTIGATIONS

**In line one of this paragraph, it is stated that compliance violation investigations are public only if the Régie determines a need to conduct a public investigation.**

- a) **Please specify the criteria to be considered by the Régie in determining whether a public investigation could be conducted.**

Clarification: Investigations of Alleged Violations are not public in order to observe their confidential nature until a final determination has been made by the Régie. It cannot be ruled out, however, that the Régie may, at the request of the government, for example, decide otherwise in the public interest, after having given the Registered Entity an opportunity to be heard.

### 2.3.19 SETTLEMENT PROCESS

- a) **Please indicate whether the settlements will be made public by the Régie.**

Clarification: Yes.

### 2.3.20 NPCC HEARING PROCESS

This refers to the hearing conducted before the NPCC board or a “balanced committee established by the NPCC board and reporting, through NERC, to the Régie as the final adjudicator.”

a) **Please explain what is meant by “balanced committee.”**

Clarification: A balanced committee is composed of representatives of several industry sectors.

b) **Also, please indicate what is meant by ”reporting, through NERC.”**

Clarification: NPCC's report, including findings and recommendations, is sent to NERC and then forwarded to the Régie.

c) **Please clarify the end-of-paragraph wording on appeals. A decision made by NPCC is appealed to NERC. What is meant by: “a determination of violation or penalty that has been directly adjudicated by the Régie shall be appealed with the Régie.”**

Clarification: As stipulated in Section 3.4 of the QCMEP, the Régie, at its discretion, may decide to lead the investigation for good cause.

**Are we to understand that there is an appeal process following a decision by the Régie, or does the paragraph refer rather to the possibility of requesting a review of a Régie decision under the Act?**

Clarification: The reference is to the possibility of requesting a review of a Régie decision under the Act.

### 2.8 REPORTING AND DISCLOSURE PROCESS

#### 2.8.3.1

a) **Please indicate what is meant by “reasonable opportunity.”**

Clarification: The time required to allow the Registered Entity to ask the Régie to designate the information as confidential in the event of a disagreement with NPCC, if need be.

#### 2.8.3.2 This paragraph refers to information considered confidential.

a) **Please explain or clarify the order of precedence among the various rules that could be applicable: section 1500 of NERC’s Rules of Procedure; Régie decisions; and the applicable law in such matters.**

Clarification: Régie decisions will take precedence. For the purposes of the QCMEP, the Régie adopts the definitions contained in Section 1500 of the NERC Rules of Procedure. It is, however, open to the Registered Entity to appeal to the

Régie if it disagrees with the position adopted by NERC or NPCC in its investigation.

### **3.2 APPEALS**

**This paragraph refers to appeals by Registered Entities of being placed on the compliance registry, which are to be resolved by the Régie.**

- a) **Is this intended to refer, rather, to the decision that the Régie will be called upon to make concerning the Registered Entities listed on the registries in case R-3699-2009?**

Clarification: Yes, and subsequent decisions regarding the updating of the registry.