

**CLARIFICATIONS PROVIDED BY THE RÉGIE DE L'ÉNERGIE (THE RÉGIE) IN RESPONSE
TO QUESTIONS FROM RIO TINTO ALCAN (RTA) DATED SEPTEMBER 14, 2009
REGARDING THE QUÉBEC COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM
(QCMEP)**

1.0 INTERPRETATION

1.1.12 Compliance Registry of NERC Registered Entities

a) Where is the *NERC Statement of Compliance Registry*? Please indicate the source. Is this registry available in French?

Clarification: The *NERC Statement of Compliance Registry Criteria* is available, in English only, at the following address:

http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf

b) What do the words “except for Québec” on the fourth line of this article refer to?

Clarification: In Québec, the register of entities subject to the Reliability Standards is filed by the Reliability Coordinator, in accordance with subsection 85.13 of the Act respecting the Régie de l'énergie. The Reliability Coordinator has filed this register with the Régie for approval in case R-3699-2009 (Exhibit B-1-HQCMÉ-2, Document 4). In other jurisdictions served by NPCC, the register is prepared in accordance with Section 500 of the NERC Rules of Procedure and with the NERC Statement of Compliance Registry Criteria.

2.0 LIST OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS

Will the standards adopted in French by the Régie for each entity and the Compliance Registry of Registered Entities be posted on the NPCC website?

Clarification: The standards adopted by the Régie for each entity and the Compliance Registry for Québec will be posted in French and English on the Reliability Coordinator's website and the Régie's website. The NPCC website will provide a link to the standards adopted by the Régie and posted on its site.

3.0 COMPLIANCE MONITORING PROCESSES

a) The French version of the article refers to the “guide des sanctions” in lower case (second line of the second paragraph). Is this the Québec *Sanction Guide* described in article 1.1.21 or another document? If the latter, what document?

Clarification: The article refers to the Québec *Sanction Guide*.

b) Does the use of the word “may” in the third paragraph mean that NPCC may, under certain circumstances, make a recommendation to the Régie without a review of the facts and without requesting the participation of the entity against which the violation has been alleged?

Clarification: In this sentence, the words “may request a fact and circumstances review of an Alleged Violation” will be replaced by “may conduct a further review of the fact and circumstances of an Alleged Violation.”

3.1.1 Compliance Audit Process Steps

a) Is the Annual Audit Plan referred to in the first bullet (first line) subject to approval by the Régie or only the audit schedules (last line)?

Clarification: As specified in article 4.2, by April 1st of each year, NPCC will submit its Implementation Plan for the following calendar year to the Régie for approval. The Implementation Plan includes the Annual Audit Plan.

b) The fourth bullet states that the audit team provides for a “review of the audit report” with the Registered Entity and “issues an audit report, including an assessment of compliance with the Reliability Standards” to NPCC. Is the Registered Entity entitled to the same information on the finding as NPCC at this stage? If not, why?

Clarification: Article 3.1.6 describes this stage of the audit process in detail.

3.1.2 NPCC Annual Audit Plan and Schedule

The first paragraph stipulates:

NPCC shall develop an Annual Audit Plan and include it in the Québec’s NPCC Implementation Plan submitted to NERC for review. NPCC provides the Annual Audit Plans to the Régie for approval.

a) Is the Régie’s approval required only for NPCC’s Annual Audit Plans and not its annual Implementation Plan for Québec? If yes, why?

Clarification: As specified in article 4.2, by April 1st of each year, NPCC will submit its Implementation Plan for the following calendar year to the Régie for approval. The Implementation Plan includes the Annual Audit Plan.

a) Is NPCC’s Implementation Plan for Québec subject to approval by NERC or the Régie?

Clarification: As specified in article 4.2, by April 1st of each year, NPCC will submit its Implementation Plan for the following calendar year to the Régie for approval.

3.1.5 Conduct of Compliance Audits

a) How does the Régie maintain its independence and institutional impartiality if it participates in a compliance audit of a Registered Entity with NPCC?

Clarification: In exercising its jurisdiction, the Régie insures that it respects principles of independence and institutional impartiality.

b) If a Régie staff member does participate in an audit, will this staff member be subject to all the conditions stipulated in this article, including rules of confidentiality and auditor training?

Clarification: When a Régie staff member participates in an audit, this staff member is subject to the rules of confidentiality specified in the Régie’s code of ethics. If the Régie staff member is a full member of the audit team, this staff member must have completed all required auditor training in addition to being subject to the same rules of confidentiality.

- c) In the last paragraph, if a Registered Entity objects to a member of the audit team, why is the Régie not the final arbiter on such matters related to the independence and impartiality of the audit process?**

Clarification: NPCC has been mandated by the Régie to monitor compliance by means including audits. The Régie would not be the appropriate forum for challenging the legality of the audit on grounds of bias. NPCC and NERC perform no adjudicative functions; rather, they perform investigative functions and report their findings and any recommendations to the Régie.

3.1.6 Compliance Audit Reports

- Are all NPCC decisions, including the decision to release an audit report, subject to the Régie complaint process?**

Clarification: Audit reports are to be released unless they identify an Alleged Violation. Identification of an Alleged Violation by NPCC is only a finding of its investigation report and not a “decision.” The Régie will be called upon to make a final determination on this finding after giving the Registered Entity an opportunity to be heard on the Alleged Violation, in accordance with subsection 85.10 of the Act.

3.3 Spot Checks

- What is the difference between a spot check (article 3.3) and an investigation (article 3.4)?**

Clarification: See the definitions of spot check and investigation in articles 1.1.24 and 1.1.6 of the QCMEP.

3.4 Investigations of Reliability Standard Violations

- a) If the Régie assumes the leadership of a Compliance Violation Investigation, what rules of procedure will apply?**

Clarification: Pursuant to subsection 85.10 of the Act, the Régie will determine whether a violation of a reliability standard has occurred and impose a sanction, if appropriate, after having given the Registered Entity an opportunity to be heard.

- b) Can NPCC undertake an investigation on its own initiative, or only at the request of the Régie?**

Clarification: It is provided that NPCC can undertake an investigation on its own initiative.

- c) The last sentence states that “Confirmed Violations resulting from a Compliance Violation Investigation will be made public.” Is this public release subject to a decision by the Régie pursuant to subsection 85.10 of the Act? Refer to the third paragraph of article 3.1.6.**

Clarification: An Alleged Violation is not made public. The Régie determines whether a violation has occurred, in accordance with subsection 85.10 of the Act, before it can be made public. Only after the Régie has made a final determination that a violation has occurred will it be made public. Article 3.1.6 deals with the release of the audit report or pertinent part thereof.

3.4.1 Compliance Violation Investigation Process Steps

a) Regarding the third bullet, why is the Régie not the final arbiter on such matters related to the independence and impartiality of the audit process, for which it is responsible?

Clarification: NPCC has been mandated by the Régie to conduct investigations. The Régie would not be the appropriate forum for challenging the legality of the investigation on grounds of bias. NPCC and NERC perform no adjudicative functions; rather, they perform investigative functions and report their findings and any recommendations to the Régie.

b) Regarding the fourth bullet, does NPCC, as a foreign agency, have jurisdiction to conduct an on-site investigation in Canada? Pursuant to what legislation?

Clarification: Paragraph 85.4(2) of the Act respecting the Régie de l'énergie provides that the Régie may, with the authorization of the Government, enter into an agreement with a body that proves it has the expertise to, among other things, monitor the application of reliability standards, in order to carry out inspections or investigations under Division II of Chapter III as part of plans to monitor compliance with the reliability standards. The investigation of a violation of the standards is conducted within the terms of reference set by the Régie.

c) Is a hearing of this type held by NPCC in Québec subject to the Régie's or the Québec courts' supervision? Pursuant to what legislation?

Clarification: A hearing held by NPCC as part of an investigation for the purpose of determining whether there is any basis to an Alleged Violation is not subject to the Régie's or the Québec courts' supervision. NPCC and NERC perform no adjudicative functions; rather, they perform investigative functions and submit a report, accompanied by recommendations if applicable, which is to be used by the Régie in the exercise of the authority assigned to it by the legislator under subsection 85.10 of the Act.

5.0 ENFORCEMENT ACTIONS

The first paragraph provides, in part:

NPCC shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within Québec, and (ii) if so, the appropriate Remedial Actions, and penalties and sanctions, as prescribed in the Sanction Guide. NPCC will then give its recommendation to the Régie for enforcement.

a) Is this determination of the violation by NPCC consistent with the functions assigned to a mandated body pursuant to subsection 85.9 of the Act, namely investigating and reporting, and the functions assigned to the Régie pursuant to subsection 85.10 of the Act, namely determining a violation and imposing a sanction?

Clarification: NPCC's function pursuant to subsection 85.9 is investigative and the Régie's function pursuant to subsection 85.10 is adjudicative. In both cases, the Registered Entity has the opportunity to be heard and to put forward its point of view.

The first paragraph also provides, in part:

NPCC and NERC will work to achieve consistency in the application of the Sanction Guide by NPCC. NERC will review sanctions in light of the Sanction Guide prior to NPCC forwarding its recommendations to the Régie.

b) How will NPCC and NERC achieve consistency in the sanctions they recommend for Québec entities in accordance with the Québec *Sanction Guide*?¹

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).

c) Will NPCC and NERC use sanctions imposed in other jurisdictions in the United States and the rest of Canada as precedents, or only sanctions imposed in Québec?

Clarification: NPCC and NERC will ensure that sanctions are consistent in North America.

d) In the second paragraph, will the NERC compliance officer's determination concerning the required information, which will be sent to the Régie, be subject to appeal before the Régie? If not, why not?

Clarification: Article 2.2.3 of the Québec Rules of Procedure (QROP) for Compliance Services provides that any objection by a Registered Entity to provide any NERC or NPCC requested specific information will be submitted to the Régie for final decision.

5.1 Notification to Registered Entity of Alleged Violation

What are the Reliability Coordinator's obligations, particularly with respect to confidentiality, after receiving notification from NPCC?

Clarification: The Reliability Coordinator is subject to its Code of Conduct, which is available on its website at:

<http://www.hydroquebec.com/transenergie/reliability/code-conduite.html>

5.2 Registered Entity Response

How is the notice from NPCC delivered to the Registered Entity? How is the 30-day deadline calculated? (From date sent, date received, date deemed received? What about non-business days and holidays, etc.?)

Clarification: The notice is sent by email. The deadline is 30 calendar days.

5.3 NPCC Hearing Process for Compliance Hearings

The first two sentences of the first paragraph state:

NPCC shall establish and maintain a Hearing Body with authority to render decisions in compliance hearings in which a Registered Entity may contest a finding of Alleged Violation, proposed penalty or sanction or Remedial Action, or a proposed Mitigation Plan, before a recommendation is made to the Régie. The NPCC Compliance Committee (CC) shall serve in the role as the NPCC Hearing Body. [emphasis added]

¹ See QROP paragraph 2.7.1.

a) Is this “authority to render decisions” on the part of the Hearing Body created by NPCC consistent with the functions assigned to a mandated body pursuant to subsections 85.9 and 85.10 of the Act, namely investigating and reporting?

Clarification: The NPCC hearing is only an investigative procedure conducted for the purpose of arriving at a recommendation to the Régie. The hearing before the Hearing Body provides the Registered Entity with another opportunity to be heard and to put forward its point of view. This proceeding is consistent with the stipulations of subsection 85.9 of the Act. Upon completion of the investigative process, conducted in accordance with the various stipulated procedures, the findings of the investigation and any recommendations will be sent to the Régie for final determination, in accordance with subsection 85.10 of the Act.

b) Does the Hearing Body hear appeals of decisions (or recommendations) by the NPCC Compliance Committee? If so, pursuant to what legislation?

Clarification: The Registered Entity may ask to be heard by the Hearing Body. This is another opportunity for the Registered Entity to be heard before the findings and any recommendations are submitted to the Régie for final determination pursuant to subsection 85.10 of the Act.

c) In the second paragraph, do the words “agissant comme animateur,” applied to the independent consultant’s role in conducting a hearing, properly describe that role? Also, these terms do not seem to appear in the English version of the QCMEP. If the two versions do not agree, is one version official, taking precedence over the other?

Clarification: The words “agissant comme animateur” will be deleted. As in the case of the Agreement between the Régie, NERC and NPCC signed on May 8, 2009, the English and French versions of the QROP and the QCMEP will be regarded as equally authentic and valid.

d) The last sentence of the second paragraph states: “The NPCC Hearing Body will not be present at the actual hearing but will have access to the complete record of that hearing before it makes its final decision.” Is this procedure consistent with the rules of natural justice under Canadian law (“he who hears must decide”)?

Clarification: NPCC’s role is solely investigative. It has no adjudicative function.

5.5 NERC Appeal Process

Shouldn’t the NPCC Hearing Body’s “decision” be subject to appeal before the Régie rather than NERC?

Clarification: The procedure the Registered Entity may undertake with NERC is part of the investigative function assigned to NPCC and NERC under the agreement authorized by the legislator pursuant to subsection 85.4 of the Act. It is open to the Registered Entity to request that NERC reconsider NPCC’s findings and any recommendations in the report. The investigative procedures adopted by NPCC include a number of elements designed specifically to ensure that the Registered Entity has the opportunity to be heard.

7.0 REMEDIAL ACTION ORDERS

a) In the third paragraph, what is the role of the “CMÉ? What force does a directive issued by the Reliability Coordinator have? What is the hierarchy of directives?

Clarification: Remedial Actions must be consistent with the operating directives provided by the Reliability Coordinator under a standard adopted by the Régie, as provided by subsection 85.13 of the Act respecting the Régie de l'énergie.

b) In the fourth paragraph, how was the short deadline of two business days established?

Clarification: The deadline reflects the urgency implied by the imposition of a Remedial Action and is consistent with industry practice.

c) The fourth paragraph provides that NPCC may hold a hearing on a challenge to a recommended Remedial Action. What statutory provision authorizes such a hearing? Under subsection 85.10 of the Act, the Régie has exclusive jurisdiction to impose sanctions and conditions (including, presumably, remedial action).

Clarification: In the performance of the mandates they have been assigned, NPCC and NERC will apply rules of investigation that provide more than one opportunity for the Registered Entity to be heard and reflect the requirement stipulated in subsection 85.9 of the Act.

8.0 REPORTING AND DISCLOSURE

a) This article mentions several reports. Which are confidential?

Clarification: The confidentiality of the reports is defined in the QCMEP in the various articles dealing with these reports.

The fourth paragraph states:

NERC will publicly post each report of a Confirmed Violation, together with any statement submitted by the Registered Entity, no sooner than five (5) business days after the report is provided by NPCC to the Régie and NERC and the Registered Entity.

b) Is this posting subject to the Régie's decision pursuant to subsection 85.10 of the Act? Refer to the third paragraph of article 3.1.6.

Clarification: Violations will be posted only after a determination by the Régie (see response to 3.4 c).

9.1 Records Management

Will the NPCC records required for QCMEP implementation be stored solely in Québec at all times?

Clarification: Retention requirements are stipulated in the QCMEP, notably in article 9.2.

9.3.1 Confidentiality and Critical Energy Infrastructure Information

Do the terms (1) "confidential information," (2) "confidential business and market information," (3) "Critical Energy Infrastructure Information," and (4) "Critical Infrastructure," defined in Section 1501 of the NERC Rules of Procedure, have equivalents in Québec regulations?

Clarification: Section 30 of the Act respecting the Régie de l'énergie stipulates that the Régie may ban or restrict the disclosure, publication or release of any information or

documents it indicates, if the confidentiality thereof or the public interest so requires. For the purposes of the QCMEP, the Régie adopts the definitions provided in Section 1501 of NERC's Rules of Procedure. However, it will always be open to a Registered Entity to appeal to the Régie if it disagrees with the position adopted by NERC or NPCC in its investigation.