LEGAL SERIES · IN PARTNERSHIP WITH STICH ANGELL, P.A. · EC-WP-801

Notice of Penalty Response Strategy

A structured response framework for the enforcement matter that ends in a Notice of Penalty. Posture, timing, evidence, negotiation pathways.

The Notice of Penalty is the last document in a NERC enforcement matter, not the first. What lands first is the Regional Entity's Notice of Preliminary Screen, then a notice of alleged violation or a settlement offer, and the decisions made in the days after it arrives shape the settlement, the public record and the next audit cycle. This reference walks through triage, privilege, the internal investigation, the factual record and settlement.

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Foreword

This professional reference is part of the Legal Series published by Energy Compliance, Inc. in partnership with Stich Angell, P.A., for registered entities and the people who run their compliance and legal programs.

NERC enforcement is, procedurally, a civil enforcement regime. Registered entities often treat it as one more compliance process. That framing matters. The decisions made early in an enforcement matter shape every later stage, and many of them call for legal judgment that compliance teams are not trained to make alone. Recognizing this late is expensive. The cost rarely shows at the moment it is incurred, and most of it can be avoided with the right operating framework in place.

Energy Compliance, Inc. partners with Stich Angell, P.A. to give registered entities integrated legal and compliance support across the full enforcement lifecycle. Rob Smith brings operator and regulator-side compliance experience, from control-center work as a Reliability Coordinator, Transmission Operator and Power System Operator to compliance auditing at the Western Electricity Coordinating Council. Cara Passaro and the Stich Angell team bring civil litigation depth, appellate practice, and an energy compliance representation practice. Together they offer an alternative to the usual model, where compliance consulting and legal counsel run as separate engagements and meet only after an enforcement matter has already arrived.

We wrote these references for the compliance manager who has to brief the general counsel honestly. For the in-house attorney who needs to understand how NERC enforcement actually proceeds. For the senior leader who has been told the enforcement matter is under control and suspects it is not. And for the outside counsel asked to advise on a NERC matter for the first time, who needs a practitioner's view of the procedural reality.

The references do not substitute for engaged counsel, and they do not replace operational compliance judgment. They describe how the system works, in the voice we use in front of regulators and in the courtroom, so that registered entities can make the decisions in front of them with the information practitioners would want them to have.

If the integrated legal-compliance approach we describe is what your entity needs, the back of this reference has our contact information. If not, the reference still belongs to you. Take what is useful and apply it well. And remember that the structural decisions made before an enforcement matter arrives are almost always worth more than the ones made after.

Cara C. Passaro and Rob Smith

Shareholder and Firm President, Stich Angell, P.A.

Founder and Principal, Energy Compliance, Inc.

Executive Summary

Registered entities often say "Notice of Penalty" when they mean the letter that just arrived from the Regional Entity. Under the NERC Compliance Monitoring and Enforcement Program (CMEP), those are different documents. The letter that arrives is a Notice of Preliminary Screen, and later a Notice of Alleged Violation and Proposed Penalty or Sanction (NAVAPS) or a settlement offer. The Notice of Penalty comes at the end: NERC files it with FERC once the matter has been accepted, adjudicated or settled. Everything that decides what that final filing says happens in between.

The NAVAPS sets out the Regional Entity's theory, the facts it relies on, and a proposed penalty. It also starts a thirty-day clock. If the entity does not elect a response in that window, the CMEP deems it to have accepted the violation and the penalty. In our view, the decisions made in the first forty-eight hours after a NAVAPS or settlement offer arrives set the course for the rest of the matter. The decisions made over the following weeks decide whether the resolution reflects the entity's actual exposure or an inflated version produced by avoidable missteps.

This reference covers how to triage the notice on receipt, protect privilege from the start, run an internal investigation that supports the entity's position instead of undermining it, work with Regional Entity counsel, and negotiate a settlement the entity can defend to its board, to the regulator, and in its own future audit cycles.

- The NAVAPS is the regulator's opening position, framed as a finding. Treating it as final is the most expensive misreading an entity can make.
- In our view, the first forty-eight hours set the course of the matter.
- Privilege is protected at the outset or it is lost. A privilege claim made after the fact is not a strategy.
- An internal investigation run under counsel supports the entity's position. One run without that structure can become the regulator's evidence.
- Regional Entity counsel is, in our view, opposing counsel for the matter. Keep the relationship professional and the negotiation direct. You can do both.
- Settlement timing matters as much as settlement substance. The Sanction Guidelines let NERC or the Regional Entity reduce the penalty for settlement, taking into account good-faith efforts to settle without undue delay.
- Every enforcement matter holds lessons for the next cycle. Counsel documents them and compliance applies them. Both happen, or neither does.

1 What a Notice of Penalty Actually Is (and What Arrives First)

1.1 The Notice of Penalty Comes Last

Appendix 4C to the NERC Rules of Procedure, the CMEP, lays out the sequence. After a potential noncompliance clears the Preliminary Screen, the Compliance Enforcement Authority (CEA), usually the Regional Entity, sends a Notice of Preliminary Screen. That notice identifies the potential noncompliance and the requirements involved, and it instructs the entity to retain and preserve all related data and records. The CEA then assesses the facts. It can dismiss the matter or resolve it as a Compliance Exception (minimal risk) or through Find, Fix, Track and Report (minimal or moderate risk). If it decides those paths do not fit, it notifies the entity of the Alleged Violation through an offer of settlement or a NAVAPS.

The Notice of Penalty is NERC's filing with FERC after the entity accepts the NAVAPS, after a hearing decision is affirmed and appeals are over, or after a settlement is reached. By the time it exists, the facts, the characterization and the penalty are fixed on NERC's side. Only FERC review, on its own motion or on the entity's application within 30 days, can change them. The table below shows where each document sits.

Stage	What the entity receives or faces	Clock	CMEP / regulation
Notice of Preliminary Screen	Potential noncompliance identified; instruction to retain and preserve records	None stated	App. 4C §5.2
NAVAPS or settlement offer	Alleged violation, supporting facts, proposed penalty with its Sanction Guidelines basis	Elect a response within 30 days or be deemed to accept	App. 4C §§5.3, 5.4
Contest	Signed response; CEA conference within 10 business days; 40 days to resolve before a hearing request (extendable by written agreement); with no hearing request by then, it becomes a Confirmed Violation	30 days / 10 business days / 40 days	App. 4C §5.4
Settlement	Negotiation at any time; the §5.4 response clock is suspended once the CEA agrees to negotiate, until talks conclude or terminate; NERC must approve	Suspended	App. 4C §5.6
Notice of Penalty	NERC files with FERC; the CEA tells the entity at least five business days before public filing	5 business days	App. 4C §5.9
FERC review	Penalty takes effect after the 30-day review period unless FERC acts; the entity may apply for review within 30 days	30 days	App. 4C §5.9; 18 CFR 39.7(e)

Stage	What the entity receives or faces	Clock	CMEP / regulation
Payment and close	Invoice due 30 days from issue; Notice of Completion of Enforcement Action follows	30 days	App. 4C §5.10

1.2 The NAVAPS Is the Opening Position

The NAVAPS is a procedural instrument. It states the Regional Entity's theory of the violation, its characterization, and its proposed penalty or sanction. It is not a final order, and it is not a finding of fact the entity cannot challenge. It is not a settlement. It opens a structured process that ends in a negotiated resolution, a confirmed violation, or a hearing, and the entity's posture in the first weeks largely decides which.

The common misreading is to treat the notice as final. The compliance team reads the language, accepts the framing, and starts planning mitigation. Legal comes in late, sometimes only when the settlement language is ready for signature. By then the factual record has been built on the regulator's framing. The entity has implicitly accepted the legal characterization by responding inside it, and the only thing left to negotiate is the size of the penalty, not the structure of the matter.

The defensible reading treats the notice as the regulator's opening position. Counsel is engaged before any substantive response is drafted. The factual record is checked against the regulator's characterization and disputes are identified for later argument. The legal characterization is examined for elements the entity can reasonably contest, and those contests are preserved in the response. None of this is adversarial toward the regulator.

Sequencing matters here, but it does not mean waiting to fix the problem. The CMEP says plainly that an entity may submit Mitigating Activities while it contests the Alleged Violation or the penalty, and that doing so does not waive its right to contest. Fix the operational issue now. What counsel sequences is the written narrative around the fix.

1.3 Communication Discipline From the First Notice

The reading also drives internal communication. The notice should not be discussed broadly inside the entity. The recipient circle is small and named, and communications about the matter run through counsel. Documents responding to the notice are not created until counsel has set the production protocol. This discipline costs nothing, and it preserves the legal options the entity will need for the rest of the matter.

> **From the Practice**
>
> The NAVAPS is the regulator's opening position, framed as a finding. The Notice of Penalty is the end of the road, not the start.
>
> Fix the operational problem now; mitigating while contesting does not waive the contest. Sequence the written narrative after the legal posture is set.

2 The First Forty-Eight Hours: Triage and Preservation

In our view, the forty-eight hours after a NAVAPS or settlement offer arrives are the highest-leverage window in the matter; Appendix 4C sets no such window, but the posture taken in it tends to stick. What happens in that window sets the legal posture, the documentary record, witness preparation, and the negotiating framework for the rest of the lifecycle. Most entities do not give this window the discipline it needs, and the missed opportunities usually stay invisible until much later. The same discipline applies, on a lighter scale, when the earlier Notice of Preliminary Screen arrives.

The triage has three parts, run in parallel.

2.1 Establish Privilege

Counsel issues a written engagement scope that defines the matter, identifies the privileged communication channel, and names the team that will work under privilege. Any consultants are brought in under an engagement structure counsel sets (Chapter 3 covers how). The privilege protocol goes in writing to everyone who may touch the matter. This step is mechanical, and it happens first, before anyone drafts a word about the facts.

2.2 Preserve Documents

A litigation hold goes out in writing. It names the categories of documents to keep, the people covered, and the time period. It is broad enough to capture everything potentially relevant and specific enough that people can actually follow it. Every recipient acknowledges it in writing, and counsel keeps the hold log. The Notice of Preliminary Screen already instructs the entity to retain and preserve all data and records relating to the potential noncompliance, so the hold formalizes an obligation the entity already has. Err toward breadth: an over-broad hold costs little, while a missed preservation can cost a great deal and can decide the case.

2.3 Triage the Facts

Counsel and a small named team review the facts as the entity understands them against the regulator's characterization in the notice. The review sorts out which disputes are worth contesting, which facts are conceded, who must be interviewed, and which documents must be reviewed. The output is a working memorandum, drafted under privilege, that frames the response strategy. It is the operating plan for the next several weeks.

2.4 Put the Thirty-Day Election on the Calendar

The NAVAPS gives the entity thirty days to elect one of the options it lists: (1) agree with the Alleged Violation and proposed penalty and agree to submit and implement a Mitigation Plan or

other Mitigating Activities; (2) agree with the Alleged Violation and the mitigation commitment but contest the penalty; or (3) contest both (App. 4C §5.3(v)). Silence counts as acceptance. A contest requires a written response explaining the entity's position, signed by an officer, employee, attorney or other authorized representative, with supporting documents. If the entity contests, it may also elect a hearing under the short-form procedure or the general hearing procedure. Entering settlement negotiations suspends the clock, but only once the CEA has agreed to negotiate. The thirty days run from the date of the NAVAPS by electronic means; the NAVAPS is effective as of the date of the CEA's electronic notification (App. 4C §§5.3, 5.4). Put the date on the calendar on day one and work backward from it.

From the Practice

In our view, the first forty-eight hours carry more leverage than anything done later in the matter. Most entities do not give the window the discipline it requires.

Privilege, preservation and factual triage happen in parallel. Each is mechanical. Skipping one is rarely recoverable later.

The output is a privileged working memorandum that frames the response strategy, and a calendar entry for the thirty-day election. Both drive everything that follows.

3 Privilege Protection at the Outset

Privilege in an enforcement matter is a discipline set up at the start and maintained through every communication and document. It is unforgiving. One broad email distribution can waive privilege over that communication and give the other side an argument about related ones. One consulting engagement set up outside the privilege framework can defeat protection that would otherwise apply. The protection has to be designed and kept up, and the design starts on day one. How far privilege reaches in a given matter is a legal question for counsel; what follows is the operating discipline that gives counsel something to defend.

3.1 A Privileged Communication Channel

Counsel names the people inside the privilege circle. Communications inside the circle can be protected. Communications outside it generally are not. The circle starts small and grows only when counsel decides it should. The distribution lists used for everyday compliance traffic are not used for the matter. The team gets the rules in writing, with examples of what to do and what not to do.

3.2 Engagement Structure for Consultants

Compliance consultants who advise the entity in normal operations are not automatically inside the privilege circle for an enforcement matter. If counsel wants them involved, counsel issues an engagement letter or addendum that retains the consultant to assist counsel on the matter, with confidentiality and work-product terms. Without that structure, the consultant's participation can defeat the privilege the entity assumes is protecting the work.

3.3 Document Creation Discipline

Memoranda prepared during the matter are drafted at counsel's direction, marked privileged, circulated only inside the circle, and stored in a controlled location apart from the entity's normal repositories. Calls and video meetings about the matter follow the same rules. These protections work only if they are applied when the communication happens. Applying them at the moment of production is too late.

3.4 Privilege Is Not a Reason to Slow Down

Privilege discipline governs how the entity communicates. It does not excuse slow or thin responses. The NERC Sanction Guidelines (Appendix 4B) direct the Regional Entity to consider an increase in the monetary penalty where an entity resisted, impeded, was non-responsive, or otherwise showed a lack of cooperation, and they presume a doubled penalty where an entity concealed or tried to conceal the violation or information needed to investigate it. Cooperation that is timely and thorough is a mitigating factor. The answer is to run privilege review fast and well, not to use it as a brake. If the entity believes a request for documents or information is

unreasonable, the CMEP gives it a defined path: it may ask NERC's general counsel for a written determination.

From the Practice

Privilege is protected at the outset or it is lost. A privilege claim made after the fact is not a strategy.

Compliance consultants are not automatically inside the privilege circle for an enforcement matter. Counsel structures their involvement, or the privilege is at risk.

Privilege discipline must never look like non-cooperation. The Sanction Guidelines treat non-responsiveness as an aggravating factor and timely, thorough cooperation as a mitigating one.

4 Building the Factual Record on Your Terms

The record in an enforcement matter is built through the response. An entity that builds it deliberately is in a different position from one that lets the record be built around it.

Every response to an information request, every production, every interview and every submission to the Regional Entity creates record. Built deliberately under counsel's direction, that record is defensible. Built from ad hoc answers under time pressure, it is the record the entity later wishes it had built differently.

4.1 Start With a Written Response Strategy

Counsel sets out, in a privileged memorandum, the legal theory the entity will assert, the facts that support it, the disputes worth contesting, and the points the entity will concede if it must. The strategy changes as the matter develops. It exists from the start, though, and gets updated instead of reinvented. Without it, each information request is answered in isolation, and the answers do not add up to a coherent legal position.

4.2 Run Productions Through Counsel

Productions go out under counsel's direction, on a set schedule, with the privilege log kept current as they go. The entity stays cooperative and produces what is requested. It also produces only what is responsive, after privilege review. Those two goals do not conflict when counsel manages the production. They conflict when compliance staff try to balance speed against protection without the legal authority to make that call.

4.3 Prepare Every Witness

Treat every interview the Regional Entity requests as testimony, however informal it seems. Preparation is the difference between testimony that supports the entity's position and testimony that creates new problems. Good preparation is professional, anchored in what the witness actually remembers, and disciplined about what the witness will and will not address. It is never coaching toward a story. Witnesses who show up unprepared tend to give testimony the entity then has to defend.

> **From the Practice**
>
> A written response strategy, drafted under privilege, drives every information request, every production and every witness interaction. Without it, the record drifts.
>
> Prepare every witness, every time.

5 The Internal Investigation, Conducted Right

An internal investigation produces either protected work product that supports the entity's strategy or ordinary business records that can end up in the regulator's file. Its structure decides which.

5.1 Why the Structure Decides the Outcome

Most enforcement matters need an internal investigation. The question is how it is run. An investigation run at counsel's direction, with the work framed as legal analysis prepared for the enforcement matter, stands the best chance of protection. The findings, the reasoning and the recommendations stay the entity's, and the entity decides what to share with the regulator and on what terms. An investigation run by compliance staff without counsel's direction, framed as a routine root cause analysis, is far more likely to be treated as an ordinary business record. If it is produced, any legal position the entity takes later has to be squared with whatever that document said, even though nobody wrote it with the legal position in mind.

5.2 Designing a Counsel-Directed Investigation

Counsel directs the investigation in writing, names the investigators, defines the scope, and frames the deliverables as legal analysis. Investigators report to counsel, not to operations or compliance. Interim work product is marked privileged and stays inside the circle, and the final deliverable is a memorandum to counsel, not a freestanding report. This is routine in legal practice and uncommon in compliance practice, which is where the friction comes from.

5.3 Two Products, Kept Separate

The investigation should produce two things: the privileged memorandum that informs legal strategy, and the factual narrative, shaped by counsel, that the entity may share with the regulator. The memorandum is broader and franker; the narrative is precise and considered. Keeping them separate lets the entity learn honestly from its own facts while it controls what it shares.

> **From the Practice**
>
> An internal investigation produces either protected work product or a business record the regulator can use. The structure decides which, before the work begins.
>
> Two products, by design: the privileged memorandum that informs strategy, and the factual narrative shared with the regulator.

6 Engaging Regional Entity Counsel: Posture and Tone

6.1 Recognize the Role

We treat Regional Entity counsel as opposing counsel, and that framing makes compliance teams used to collaborating with Regional Entity staff uncomfortable. The collaboration is real. So is the procedural posture once a matter is open. The same professionals who work with the entity on routine compliance represent the regulator's enforcement interests once a matter is pending, and NERC may take part in any settlement negotiation. The relationship survives the role being recognized; it suffers when the role is ignored.

6.2 A Consistent Professional Posture

Communications are courteous, deadlines are met, and information requests get substantive answers within counsel's production framework. The entity's people do not personalize the matter, do not show irritation when the regulator's position is unwelcome, and do not play tactical games to score points. That posture is professional, and it is also strategic: the two sides' counsel are likely to meet again in later matters.

6.3 Direct Negotiation

State the entity's legal positions clearly. Articulate disputes with specifics. Make settlement proposals with discipline and answer the other side's with the same discipline. Do not dance around the substantive issues; engage them. Being direct tells Regional Entity counsel the entity is serious, and that moves a matter toward terms it can defend. The CMEP also requires the entity to designate the person or people authorized to negotiate on its behalf. Choose them deliberately.

This matter will close. The entity will be back in front of the same Regional Entity in later audit cycles, and the counsel relationship it builds now shapes the next one. Counsel who treat the current matter as the last interaction make the next interaction harder.

> **From the Practice**
>
> In our view, Regional Entity counsel is opposing counsel for the matter and a long-term counterparty for the relationship. Both are real. Treating one without the other is the mistake.
>
> Professional posture lowers the temperature. Direct negotiation closes the matter on credible terms.

7 Settlement Strategy and Timing

Settlement timing matters as much as settlement substance. Early posture shapes the eventual offer.

7.1 Timing Is a Strategic Variable

Settlement has two dimensions. Substance covers the characterization, the penalty amount and any non-monetary terms. Timing covers when the entity signals interest, when real negotiation starts and when the resolution is final. Most entities focus on substance and let the process set the timing. We treat timing as a variable that moves the substance.

The CMEP lets either side open settlement at any time, even before the CEA issues a notice of Alleged Violation, though the CEA may decline to negotiate once a matter becomes a Confirmed Violation. The Sanction Guidelines allow a reduction in the monetary penalty for settlement, taking into account the entity's good-faith efforts to settle without undue delay. Signaling settlement before the entity has built its record and confirmed its positions tells the other side the entity is anxious to close, and that affects the offer. Letting the matter sit for months without progress tells the other side the entity will drag it out, and that affects the offer too. Our view is that the right moment to signal readiness is when the record is built and the positions are confirmed, and the signal should come through counsel's measured engagement with Regional Entity counsel, not through process concessions.

7.2 Stage the Negotiation

The substantive framework develops in stages. Early discussions settle the shape of a resolution without committing to specifics. Mid-stage discussions narrow the terms. Late-stage discussions finalize the language that goes into the settlement agreement and, eventually, the Notice of Penalty NERC files with FERC. Each stage has its own discipline. Committing to specific terms too early closes off options that mid-stage information might have opened. Leaving substantive disputes for the end drags the matter out. Counsel manages the staging.

7.3 Draft the Settlement Document With Care

The CMEP sets the boundaries. The settlement may state that the entity admits the Alleged Violation, does not contest it, or neither admits nor denies it. It may not state that the entity denies it. Any approved settlement must waive the entity's right to further hearings and appeal. The entity may submit an explanatory statement for inclusion, subject to the CEA's consent. NERC reviews each settlement for consistency with settlements of similar violations and approves or rejects it, and settlements stay confidential until NERC approves them.

Within those boundaries, every element is drafted with care. The recitals describe the facts in language the entity will live with in any later matter. The penalty reflects the negotiation. The non-monetary terms, including mitigation and any compliance program commitments, must be

things the entity can actually carry out. The release language gets reviewed for scope. Each element is weighed against the entity's interests over several time horizons, not just the immediate goal of closing the matter.

After NERC approves the settlement, it reports it to FERC and publicly posts information about the violation and the penalty, including a copy or description of the settlement terms, with Critical Energy or Critical Electric Infrastructure Information and other confidential information redacted. For violations of non-CIP standards, NERC also posts the Notice of Penalty itself, with the violator's identity and any statement the entity submitted. In most matters, the settlement becomes a public document the entity may have to answer for in future audit cycles.

7.4 From Settlement to the Notice of Penalty

Once NERC approves the settlement or the Notice of Confirmed Violation, the CEA must tell the entity at least five business days before the Notice of Penalty is publicly filed, and NERC files it no sooner than five business days after its approval. The penalty takes effect when the thirty-day period after filing expires, unless FERC orders a longer period or decides to review it. Under FERC's regulations, the entity may apply for review within those thirty days; without an application or FERC action, the penalty is affirmed by operation of law. The CEA then issues a payment due notice and invoice, payable within thirty days, and a Notice of Completion of Enforcement Action once the entity has met every requirement of the Notice of Penalty and any settlement. By this stage the entity's leverage is largely spent.

> **From the Practice**
>
> Settlement timing matters as much as substance. Anxious early signaling and indefinite delay both move the offer, and the Sanction Guidelines allow a reduction for good-faith settlement without undue delay.
>
> Signal readiness when the record is built and the positions are confirmed.
>
> The settlement is likely to become public. Drafting it well is the difference between a clean close and a recurring liability.

8 Lessons for the Next Cycle (and How Counsel Documents Them)

Every enforcement matter holds lessons for the next cycle. Capturing them depends on counsel and compliance treating the close of the matter as the start of the next preparation.

However it resolves, every matter teaches something: about the program design that allowed the violation, the documentation that did or did not hold up, the witness preparation, and how well legal and compliance worked together under pressure.

8.1 Two Documents

The lessons go in two places. A privileged after-action memorandum, drafted by counsel and shared inside the privilege circle, records the legal lessons honestly. What the entity did right. What it did wrong. What the matter would have looked like under a different posture. What the entity will change next time. The memorandum can be candid because it is privileged, and that candor is what gives the entity information it can act on.

A second document, written at a higher level for broader distribution, records the operational and program lessons: what the program will change, what documentation discipline will look like, what the training updates are, and how often internal review will happen. It can circulate inside the entity and it shapes how the compliance program evolves. It leaves out the legally sensitive analysis the privileged memorandum holds, and it does not need it.

8.2 Update the Operating Framework

The close of a matter is also the time to revise the legal-compliance operating framework described in EC-WP-800. The triggers for bringing in counsel may shift. Privilege protocols may tighten. Witness preparation may expand. Document creation rules may change. The framework evolves as the entity learns. Entities that build this learning loop into their close-out go into the next matter better prepared. When the next notice arrives, it should find an entity better prepared than the last one did.

> **From the Practice**
>
> The privileged after-action memorandum is candid because it is privileged. The candor is what makes it useful.
>
> The legal-compliance operating framework should change after every matter. If it does not, the lessons were not captured.

Glossary

Term	Meaning in this paper
Alleged Violation	A potential noncompliance for which the CEA has determined that evidence exists that the entity violated a Reliability Standard, resolved outside the Compliance Exception or FFT processes.
Compliance Enforcement Authority (CEA)	NERC or the Regional Entity, in its role enforcing the Reliability Standards; in most matters, the Regional Entity.
Compliance Exception	A CMEP path for noncompliance posing minimal risk to the Bulk Power System. Compliance Exceptions are not included in the entity's compliance history for penalty purposes, subject to the conditions in Appendix 4C.
CMEP	The NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure.
Confirmed Violation	An Alleged Violation for which (1) the entity accepted or did not contest the NAVAPS or other notification of the Alleged Violation, (2) NERC or a Hearing Body issued a final order finding a violation, penalty or sanction, (3) the period for requesting a hearing or an appeal expired, or (4) the entity executed a settlement agreement under App. 4C §5.6.
Find, Fix, Track and Report (FFT)	A CMEP path for noncompliance posing minimal or moderate risk, available where the conditions in Appendix 4C are met.
Litigation hold	A written, acknowledged instruction to preserve documents and data relevant to a matter.
Mitigating Activities	Actions taken to correct a violation and its causes. Under Appendix 4C, submitting them does not waive the right to contest the Alleged Violation or penalty.
NAVAPS	Notice of Alleged Violation and Proposed Penalty or Sanction; it starts the entity's thirty-day election period.
Notice of Penalty	NERC's filing with FERC after a NAVAPS is accepted, a hearing decision is affirmed with appeals concluded, or a settlement is reached. The penalty takes effect after FERC's thirty-day review period unless FERC acts.
Notice of Preliminary Screen	The CEA's notice that a potential noncompliance has been identified, with an instruction to retain and preserve related records.
Privilege circle	The named people inside counsel's privileged channel for a matter.
Sanction Guidelines	NERC Rules of Procedure Appendix 4B, which governs how penalties are set, including aggravating and mitigating factors.

How Energy Compliance Can Help

Enforcement matters go better when legal and compliance work run as one effort from the first notice. Every Legal Series engagement is led by a named senior practitioner on the compliance side and a named partner at Stich Angell on the legal side, scoped to the entity's role and the stage of the matter.

Legal Series services with Stich Angell, P.A.

Integrated legal-compliance services include, but are not limited to:

- Notice of Penalty response strategy and execution
- Internal investigation conducted under privilege
- Document production and privilege log management
- Witness preparation for Regional Entity interviews
- Settlement negotiation with Regional Entity counsel
- Self-Report drafting and legal review
- FERC submission preparation and review
- Legal-compliance operating framework design
- Counsel-led after-action review and lessons integration

The practice is organized in four areas:

- Enforcement Defense: Notice of Penalty response and settlement strategy.
- Privilege Counsel: internal investigation and document production under privilege.
- Regulatory Advisory: FERC submissions and Regional Entity counsel engagement.
- Legal-Compliance Integration: operating frameworks built before enforcement arrives.

Energy Compliance services and platforms

- Data request strategy: sequencing responses to Regional Entity requests under counsel's production protocol.
- Audit defense: preparing for the audits that test whether settlement commitments held.
- Compliance program management: tracking and evidencing settlement commitments.
- WattOps Compliance: EC's NERC compliance evidence platform (wattopscompliance.com). An enforcement position is only as good as the evidence the entity can produce on schedule. EC will run one standard at one facility through WattOps at no cost (CIP standards excluded).
- RenewOps: EC's renewable operations monitoring and analytics platform, with a Data Center module. When an alleged violation turns on what a wind, solar or storage facility was doing, its operations data is part of the record.

If a notice has arrived, or you want the framework in place first, call or write.

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About the Author

Cara C. Passaro is Shareholder and Firm President at Stich Angell, P.A. She has represented clients throughout the upper Midwest since 2001 and has tried to verdict, won on dispositive motion, or favorably settled hundreds of cases. Her practice covers construction, premises liability, products liability, transportation and energy compliance representation. She is licensed to practice in the Minnesota and North Dakota state and federal courts and is recognized as a Super Lawyer.

Cara serves as the named legal author of the Energy Compliance, Inc. Legal Series and is the partner engagement lead for the Stich Angell side of the integrated practice.

Rob Smith is the Founder and Principal of Energy Compliance, Inc., with more than thirty years in the industry on every side of the system. He began in control-room operations as a Reliability Coordinator, Transmission Operator, and Power System Operator across RTO/ISO and utility control centers. On the regulator side, he was a senior compliance auditor and subject matter expert for NERC Reliability Standards. He audited grid facilities, evaluated mitigation adequacy, participated in risk-based oversight of utility mitigation activities, and supported the development of violation notifications and settlements in FERC-directed enforcement actions. He conducted a regulatory audit in the Sultanate of Oman against the Sultanate's Sector Law and Grid Code.

He founded Energy Compliance, Inc. to deliver senior regulator-side compliance authority without the layered staffing and billable-hour overhead of larger firms.

Education: MBA, Energy Management, University of Mary; MSL, Compliance Law, Fordham Law University; BAS, Energy Management, Bismarck State College; BAS, Mechanical Engineering, Metallurgy minor, University of Florida; BAS, Criminology, St. Petersburg College (State Law Enforcement Certification); AAS, Power Plant Technology, Bismarck State College; AAS, Electrical Transmission System Technology, Bismarck State College.

Certifications: NERC Lead Auditor training; previously NERC-certified at the Reliability Coordinator level; 1st Class A Boiler Engineer License, Minnesota.

About Stich Angell, P.A.

Stich Angell, P.A. is a Minnesota civil litigation firm. Since 1971, its lawyers have represented businesses, individuals and organizations across civil litigation, with a long-established practice in insurance defense. The firm's practice areas include products liability, construction, transportation, professional negligence and appellate practice. Although it is a Minnesota firm, it represents clients throughout the country.

Stich Angell has extended its civil litigation practice into energy regulatory legal services, including NERC and FERC enforcement defense, and partners with Energy Compliance, Inc. to give registered entities integrated legal and compliance support across the NERC enforcement lifecycle.

Stich Angell, P.A. is located in Bloomington, Minnesota. To engage the integrated legal-compliance practice, contact Energy Compliance, Inc. at 763.438.4427 or Stich Angell at 612.333.6251. Online at stichlaw.com.

About Energy Compliance, Inc.

Energy Compliance, Inc. is an independent consulting and advisory firm focused on electric reliability, cybersecurity reliability, and regulatory compliance for organizations connected to the North American Bulk Electric System.

Our work supports registered entities, including Generator Owners and Operators, Transmission Owners and Operators, Reliability Coordinators, Balancing Authorities, and Distribution Providers, across NERC Reliability Standards, FERC orders, RTO/ISO rules, Regional Entity oversight, and state frameworks.

Energy Compliance partners with Stich Angell, P.A. for legal matters that arise in the NERC enforcement lifecycle, including Notice of Penalty response, settlement negotiation, internal investigation under privilege, and the integrated legal-compliance operating frameworks registered entities need before enforcement arrives. The integrated practice replaces the sequential model, where compliance and legal engage separately and meet only after a matter has escalated.

Engagements are overseen by a senior practitioner on the compliance side and a named partner on the legal side. We do not staff for billable hours. We staff for outcomes. Our deliverables are written to be carried out and to hold up in an audit, not to manufacture activity.

Energy Compliance is not affiliated with, sponsored by, or endorsed by NERC, FERC, or any Regional Entity. Learn more at energycomplianceinc.com. Stich Angell at stichlaw.com.

Sources and Authorities

- North American Electric Reliability Corporation, Rules of Procedure, Appendix 4C, Compliance Monitoring and Enforcement Program (effective May 19, 2022), Sections 4A.1, 4A.2, 5.0 through 5.10 and 8.0, and Attachment 2, Hearing Procedures, Section 1.3.4. https://www.nerc.com/globalassets/who-we-are/rules-of-procedure/appendix-4c.pdf
- North American Electric Reliability Corporation, Rules of Procedure, Appendix 4B, Sanction Guidelines of the North American Electric Reliability Corporation (effective January 19, 2021), Sections 2.5 and 3.3 through 3.4. https://www.nerc.com/globalassets/who-we-are/rules-of-procedure/appendix-4b.pdf
- North American Electric Reliability Corporation, Rules of Procedure, Appendix 2, Definitions Used in the Rules of Procedure (effective June 27, 2024). https://www.nerc.com/globalassets/who-we-are/rules-of-procedure/appendix-2.pdf
- Federal Power Act section 215(e), 16 U.S.C. 824o(e). https://www.law.cornell.edu/uscode/text/16/824o
- 18 CFR 39.7, Enforcement of Reliability Standards (Federal Energy Regulatory Commission), eCFR, accessed October 25, 2026. https://www.ecfr.gov/current/title-18/chapter-I/subchapter-B/part-39/section-39.7
- Stich Angell, P.A., Cara C. Passaro, Shareholder and Firm President, attorney profile. https://stichlaw.com/cara-c-passaro/
- Stich Angell, P.A., About Us. https://stichlaw.com/about-us/
- Stich Angell, P.A., Expertise. https://stichlaw.com/expertise/
- Energy Compliance, Inc. and Stich Angell, P.A., EC-WP-800, NERC Enforcement: A Legal Field Guide (Legal Series). https://energycomplianceinc.com

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