LEGAL SERIES · IN PARTNERSHIP WITH STICH ANGELL, P.A. · EC-WP-802

Settlement Negotiation in NERC Enforcement

What a defensible settlement actually looks like and how penalty methodology gets argued.

NERC enforcement settlements are negotiated outcomes. The penalty, the characterization of the violation, the mitigation and the language of the agreement can all move, even when they look fixed. This reference covers reading the Regional Entity's position, arguing the Sanction Guidelines penalty build, and drafting and closing an agreement the entity can live with.

Energy Compliance, Inc. Professional Reference

energycomplianceinc.com **OCTOBER 2026**

Disclaimer & Legal Notice

This publication is the work product of Energy Compliance, Inc. and Stich Angell, P.A., and is provided for general information and educational purposes only. It does not constitute legal advice, regulatory guidance, or formal interpretation of any NERC Reliability Standard, FERC order, or Regional Entity directive.

No attorney-client relationship is formed by reading this publication. Communications with Stich Angell, P.A. or its attorneys do not become privileged solely by reference to this publication. Readers should not act or refrain from acting on the basis of any content contained here without seeking professional legal counsel admitted to practice in the relevant jurisdiction.

This publication may not be used or cited as authority in any audit, enforcement, regulatory, or legal proceeding. Compliance with NERC Reliability Standards depends on facts and circumstances unique to each registered entity, and the reader should consult qualified counsel and subject matter experts when making compliance decisions.

NERC, FERC, and the names of Regional Entities are referenced here for descriptive purposes only. Energy Compliance, Inc. and Stich Angell, P.A. are not affiliated with, sponsored by, or endorsed by the North American Electric Reliability Corporation, the Federal Energy Regulatory Commission, or any NERC Regional Entity.

Energy Compliance, Inc. and Stich Angell, P.A. assume no responsibility or liability for errors, omissions, or outcomes resulting from the use of this publication.

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 bind the entity through 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 more than thirty years of operator and regulator-side compliance experience. Cara Passaro and the Stich Angell team bring civil litigation depth, appellate practice, and a growing focus on energy compliance representation. 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

NERC enforcement settlements are negotiated outcomes. The penalty amount, the way the violation is characterized, the mitigation obligations, the recital language, the scope of what the agreement resolves and the timing of resolution can all move, even when the early communications make them look fixed. The NERC Compliance Monitoring and Enforcement Program (CMEP) lets the registered entity ask for settlement, and the Regional Entity offer it, at any time, including before a notice of Alleged Violation is issued. We think entities that approach settlement as a negotiation get materially different outcomes from entities that treat it as a process of accepting the regulator's terms.

This reference walks through the settlement window, how to read the Regional Entity's position, the posture that makes a negotiation credible, how the NERC Sanction Guidelines build a penalty and where that build can be argued, the drafting that protects the entity in later cycles, sequencing and pace, the internal authority that lets counsel close cleanly, and what happens between NERC's approval of the agreement and the Notice of Penalty NERC files with FERC.

- Reading the Regional Entity's actual position means reading past the formal communications. The signals are there for counsel who knows what to look for.
- A cooperative posture and direct negotiation are not in tension. Used together, they produce credible settlements faster than either one alone.
- The penalty is built in steps under Appendix 4B, the Sanction Guidelines. Each step has its own inputs, and the inputs are where the argument happens.
- Substance and drafting are separate negotiations. Entities that conflate them give back in the drafting what they won on substance.
- Sequencing matters. Committing to specific terms early forecloses options that mid-stage information would have supported.
- Define internal authority before negotiation begins. The CMEP already requires the entity to name who is authorized to negotiate for it.
- NERC publicly posts the settlement, or a description of its terms, along with any agreed Mitigation Plan or a description of the Mitigating Activities. Drafting it well is the difference between a clean close and a recurring liability.

1 The Settlement Window: When It Opens and What It Demands

The settlement window opens earlier than registered entities recognize. Treating the early period as preliminary rather than negotiated is one of the main sources of avoidable concessions.

1.1 What the CMEP Says About Settlement

Section 5.6 of the CMEP, Appendix 4C to the NERC Rules of Procedure, sets the ground rules. The registered entity can request settlement negotiations, and the Compliance Enforcement Authority (CEA) can offer settlement, at any time, including before it issues notification of an Alleged Violation. The CEA may decline to start or continue negotiations once a matter has become a Confirmed Violation. Either side may end negotiations at any time.

Several other provisions shape the negotiation from the first conversation:

- Where the CEA agrees to negotiate, the thirty-day period for responding to the notice of Alleged Violation is suspended until negotiations conclude or end.
- NERC must be told of every settlement negotiation and may take part in any of them.
- Settlements stay confidential until NERC approves them.
- The CEA must require the entity to designate the individual or individuals authorized to negotiate on its behalf.
- The CEA may consider all relevant facts. The agreement must ensure that Bulk Power System reliability is not compromised by the settlement and that no Reliability Standard violation results from it.

1.2 The Window Opens Before the Proposal

The settlement window does not open with a formal settlement proposal. In our view it opens the moment the Regional Entity begins assessing the matter. From that point on, every communication is in some sense a settlement communication, because the regulator is forming the framing that will shape the eventual proposal. Entities that recognize this early, and conduct themselves accordingly, are negotiating from the start. Entities that treat the early period as preliminary find out later that the framing they did not contest has hardened into the regulator's settlement position.

1.3 The Phases of the Window

The window has identifiable phases, even where the boundaries are informal:

1. The pre-notice phase. After the Notice of Preliminary Screen, the CEA assesses the facts and builds its view of the case.

2. The notice phase. The CEA states its theory in writing, through an offer of settlement or a Notice of Alleged Violation and Proposed Penalty or Sanction (NAVAPS).
3. The substantive negotiation. The parties exchange positions on penalty, characterization and mitigation.
4. The drafting phase. The language of the settlement agreement is finalized.
5. The closure phase. The agreement is executed, reviewed and approved by NERC, and filed by NERC with FERC as part of a Notice of Penalty.

Each phase has its own pace and its own decision points. The entity has to be present and disciplined in all of them.

1.4 What Each Phase Demands

The demands differ. The pre-notice phase calls for documentary discipline and careful framing of anything the entity submits. The notice phase calls for a measured response and a clear list of the elements the entity can contest. The substantive negotiation calls for clear positions and a willingness to engage on specifics. Drafting calls for precision and patience through revisions. Closure calls for attention to what NERC will file and publish, and to the entity's own internal sign-off. Compressing these phases, or treating them as procedural steps rather than substance, produces predictable losses.

Counsel manages the window from the moment a potential matter arises. Compliance supplies the facts, carries out the operational work and supports internal coordination. The two functions run in parallel the whole way. The settlement the entity wants at the end of the window is built in every phase of it, not only in the formal negotiation.

> **From the Practice**
>
> Before any response goes out, name the phase the matter is in. What the entity owes the regulator, and what it can still contest, changes from one phase to the next.

2 Reading the Regional Entity's Position

We read the regulator's actual position as sitting near its formal communications, seldom exactly on them. Reading it takes interpretation, not transcription.

2.1 The Formal Position and the Real One

The Regional Entity's formal communications state a position. Its actual position sits close to that, but not on top of it, and reading the gap is one of the most consequential judgments in the matter. Entities that take the formal position as settled miss the room to negotiate. Entities that read past it, respectfully, find where movement is possible and where it is not.

2.2 Signals in the Documents

A NAVAPS has to state the proposed penalty or sanction and explain the basis on which the CEA found it applicable under the Sanction Guidelines. That explanation is a map of the CEA's reasoning, and every input it relies on is a place to engage. In our view the proposed penalty is generally a starting figure, not a final one, and the framing language suggests how much room exists.

Characterization language shows how confident the regulator is in its theory. Precise, specific characterization signals confidence. Broad, qualified characterization signals room for refinement. Proposed mitigation reflects the regulator's perception of risk in the underlying issue, and that perception can shift when the entity supplies credible information the regulator does not yet have.

2.3 Signals in Conduct, and a Moving Position

The other signal is conduct. Posture in the kickoff meeting, pace of scheduling, the specificity of information requests and the response to the entity's submissions all show how the regulator is calibrating the matter internally. Counsel who reads only the formal communications misses that calibration. And the position moves as the entity supplies information and argument. Where the regulator stands at week six may differ from where it stood at week one. A static reading of a moving position produces stale strategy.

> **From the Practice**
>
> The NAVAPS has to explain how the proposed penalty was determined. Characterization language reveals confidence. Mitigation proposals reflect risk perception. Each is a signal counsel can read.
>
> The regulator's position evolves as the matter develops. Read it continuously.

3 Posture: Cooperative, Direct, Disciplined

Three qualities sound contradictory and work together. Any one of them alone produces a worse outcome than the combination.

3.1 The Combination

The professional posture in NERC settlement negotiation combines three qualities. Cooperative means responsive and constructive. Direct means stating positions clearly and contesting where contest is warranted. Disciplined means holding the strategy across communications instead of drifting under short-term pressure.

The Sanction Guidelines give cooperation weight of its own. Among the factors NERC or the Regional Entity must consider when adjusting a penalty are the degree and quality of the entity's cooperation in the investigation and in any directed Mitigating Activities, and any attempt to resist, impede or be non-responsive. Directness does not cost the entity that credit. Obstruction does.

3.2 Each Quality Alone

Cooperation without directness produces deference. An entity that is uniformly agreeable signals that it will not contest the regulator's framing, and the regulator's framing then becomes the settled framing. Every term then anchors on the regulator's opening, and the entity pays for its agreeable posture with a settlement that reflects the regulator's view instead of a negotiated outcome.

Directness without cooperation produces friction. An entity that contests every framing, disputes every characterization and resists every information request signals an adversarial posture that hardens the regulator's position instead of moving it. Our read is that this is how a matter that should close in weeks runs on for months.

Discipline without flexibility produces brittleness. An entity that sticks mechanically to its first strategy, whatever new information arrives, loses chances to settle on better terms once the regulator's real position becomes clearer. The strategy updates as information arrives. The posture stays constant.

> **From the Practice**
>
> Cooperative, direct and disciplined work together. Cooperation without directness produces deference, and a settlement that reflects the regulator's view rather than a negotiated outcome.
>
> Discipline means a constant posture, not rigid tactics.

4 The Substance Negotiation: Penalty, Characterization, Mitigation

The substantive negotiation has three main axes. They move at different rates and respond to different arguments. Treat them as three negotiations, not one.

4.1 Three Axes, Negotiated Separately

The three axes are the penalty amount, the characterization of the violation and the mitigation requirements. Each moves at its own rate, responds to its own kinds of argument and carries its own significance for the entity beyond this matter. In our view, negotiating all three as one bundle yields the regulator's preferences on every axis. Working them as three exercises, sequenced on purpose, yields the entity's priorities.

4.2 How the Penalty Is Built

Penalty methodology is set by Appendix 4B to the NERC Rules of Procedure, the Sanction Guidelines. The CMEP requires the CEA to determine penalties and sanctions as the Sanction Guidelines prescribe. The calculation runs in three steps.

Step	What happens	Inputs named in Appendix 4B
1. Base Monetary Penalty Amount	An initial value is set and adjusted for the facts of the violation	Violation Risk Factor and Violation Severity Level table; entity size; assessed risk; violation duration; violation time horizon
2. Adjusted Monetary Penalty Amount	The base is adjusted for aggravating and mitigating factors	At a minimum: repetitive violations and compliance history; failure to comply with a Remedial Action Directive; intentional violations; concealment or lack of cooperation; management involvement; presence and quality of the compliance program; degree and quality of cooperation; self-reporting and voluntary Mitigating Activities
3. Final Monetary Penalty Amount	Final adjustments for other circumstances	Settlement; admitting and accepting responsibility; extenuating circumstances; disgorgement of unjust profits; the entity's financial ability to pay, on written request

The table is where penalty arguments live. In general the initial value starts at the low end of the VRF and VSL range and moves on the other base factors. Each adjustment factor is a question of fact, and many of those facts sit in the entity's own records. The Guidelines also state that the absence of an aggravating or mitigating factor has no effect on the penalty, so the entity gains nothing by assuming a credit it has not demonstrated.

Settlement itself is a lever. NERC or the Regional Entity may reduce the monetary penalty when the entity resolves the violation through settlement, taking into account the entity's good-faith efforts to settle without undue delay. Where the entity also clearly demonstrates recognition and affirmative acceptance of responsibility, a further reduction may be considered beyond the settlement credit. Section 2.5 adds that settlement terms on monetary and non-monetary penalties can supersede the penalties the Guidelines would otherwise produce.

Penalty figures move when the regulator is persuaded that the proposed figure does not fit these anchors: the factual record, demonstrated remediation, the entity's compliance history and comparison with published matters. NERC itself reviews every settlement for consistency with other settlements for similar violations or in similar circumstances, so comparison with published matters is an argument the reviewing body already uses. Saying the figure is too high moves nothing.

4.3 Characterization

Characterization is often the most important axis and the most underweighted. The label the violation carries in the agreement affects the entity's regulatory record, its exposure in later matters and its public posture. In our view, a violation characterized as a control failure and one characterized as a documentation gap are very different outcomes even at an identical penalty, because future audits, future enforcement matters and future regulatory inquiries will read the earlier characterization.

The CMEP fixes the outer limits. The agreement 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. Which of the three permitted forms the agreement uses is itself a term to negotiate, and so is every sentence of fact around it. Counsel negotiates characterization with the long-term record in mind, not only this matter.

4.4 Mitigation

Mitigation negotiation balances the regulator's need for assurance against the entity's need to be able to deliver. Requirements that exceed what the entity can credibly carry out create future exposure. Requirements that fall short of what the regulator considers adequate will not close the matter, because the agreement must ensure that reliability is not compromised and that no violation results from the settlement.

Those commitments outlast the negotiation. The CEA issues a Notice of Completion of Enforcement Action only after the entity has completed all the requirements in the Notice of Penalty and any settlement agreement. Until then, the mitigation language is a live obligation.

> **From the Practice**
>
> Penalty, characterization and mitigation move at different rates. The penalty is built in three steps under the Sanction Guidelines. Argue the inputs, not the total.
>
> Characterization is the most underweighted axis. Mitigation language in the agreement becomes a compliance obligation until the matter is formally completed. Drafting it well is the difference between closed and continuing.

5 The Drafting Negotiation: Recitals, Releases, Operating Terms

Drafting the settlement agreement is its own negotiation, separate from the substance that came before it. Entities that conflate the two give back in drafting what they won on substance.

5.1 A Second Negotiation

Once the substantive terms are agreed, a separate negotiation begins over the language. The substance is settled in principle. The document puts the agreement into operation, and operational language can move outcomes in either direction even when the deal itself is done. Entities that treat drafting as ministerial give up ground that careful drafting would have kept. Entities that treat it as its own negotiation get documents that reflect the agreed substance accurately.

The agreement is not a private document for long. Under CMEP Section 5.6, NERC publicly posts information about every approved settlement, including a copy of the agreement or a description of its terms and a copy of any agreed Mitigation Plan or a description of the Mitigating Activities, with Critical Energy Infrastructure Information, Critical Electric Infrastructure Information and Confidential Information redacted. Draft for that audience.

5.2 Recitals

The recitals frame the facts the entity is acknowledging. They are not the place to relitigate the substance. They are the place to make sure the framing is precise, accurate and no broader than the agreed scope. Loose recital language can become record evidence in later matters, and an entity may find years later that it acknowledged facts it never meant to acknowledge. Counsel reviews the recitals line by line for scope, characterization and any language that could be cited against the entity in another context.

5.3 The Explanatory Statement

The CMEP lets the entity submit an explanatory statement to be included in the settlement agreement, subject to the CEA's consent as part of the agreement. It must carry the name, title and signature of an officer, employee, attorney or other authorized representative. NERC includes the entity's statement with the Notice of Penalty. This is the one place in the public record where the entity speaks in its own words, and its wording deserves the same negotiation discipline as the recitals.

5.4 What the Agreement Resolves

One term is fixed. Every settlement agreement must provide that, if the settlement is approved, the entity waives its right to further hearings and appeal. What else the agreement resolves is a

drafting question. In our view a broader statement of what is resolved serves the entity by closing off future claims arising from the same facts, and a narrower one serves the regulator by preserving its ability to pursue related matters. The negotiation between those positions is real, and its outcome affects exposure beyond this matter. Counsel negotiates scope with the same discipline applied to the penalty.

5.5 Operating Terms

Operating terms include mitigation obligations, reporting requirements, periodic certifications and compliance program commitments. Each is a future obligation, and the entity will be measured against the exact words for as long as the obligation runs. Vague terms invite disputes about whether the entity complied. Precise terms make compliance defensible. The drafting effort needed to get there is small next to the cost of fighting over ambiguity later.

> **From the Practice**
>
> The drafting negotiation is separate from the substance negotiation.
>
> NERC posts the agreement or a description of its terms. Recital language can become record evidence in later matters. Review it line by line for scope, characterization and future-citation risk.
>
> Operating terms are future obligations. Draft them so compliance can be shown against the exact words.

6 Sequencing and Pacing the Negotiation

Timing affects substance. The order in which positions are exchanged compounds across the negotiation in ways the parties rarely go back and revisit. Counsel manages sequencing as a strategic variable, not a procedural one.

6.1 Opening Positions Are Not Commitments

The entity's opening position should reflect its strongest defensible posture, not a midpoint between its best and worst case. Opening at a midpoint anchors the negotiation at a midpoint. Opening at a strong, defensible position creates room to move, and the movement itself helps locate the real settlement zone. Counsel reads the regulator's opening the same way: as a starting point.

6.2 Substance, Then Drafting

Resolve substantive issues before drafting begins; mixing them in the same rounds confuses both. Timing decisions, such as when to signal readiness to settle and when to push for closure, follow progress on both, with counsel running the calendar.

6.3 Patience Without Inertia

Negotiations that move too fast often resolve on the regulator's terms, because the entity has not had time to build and present its strongest positions. Negotiations that move too slowly lose momentum, frustrate the regulator and risk hardening into a hearing. Slowness also has a price under the Sanction Guidelines: the settlement reduction takes into account the entity's good-faith efforts to reach settlement without undue delay. The right pace is deliberate, with every delay explained and the path to closure visible to both sides.

> **From the Practice**
>
> Opening positions are not commitments. A strong, defensible opening creates room to move. A midpoint opening anchors the negotiation at a midpoint.
>
> Settle substance before drafting. The right pace is deliberate. Too fast resolves on the regulator's terms. Too slow risks a hearing and puts the settlement credit at risk. Counsel sets the pace.

7 Internal Authority and Decision Architecture

Counsel who has to consult upward mid-conversation loses leverage in real time. Define the internal authority structure before negotiation begins.

7.1 Authority Is Visible

The CMEP requires the CEA, in every settlement discussion, to have the entity designate the individual or individuals authorized to negotiate on its behalf. That answers who is at the table, not what that person can agree to. Counsel who can commit the entity in the room is treated differently from counsel who has to take every substantive position back for approval. Regional Entity counsel calibrates its own posture to what it perceives about the entity's authority, and we believe entities whose counsel must keep deferring up the chain tend to pay for it in less favorable terms.

7.2 Define the Range Before the First Session

Before negotiations begin, the entity should set a defined authority structure. Counsel has authority to commit the entity within a defined range of penalty, characterization and mitigation terms. Movement outside that range requires entity approval, through a defined path, on a timeline that fits the negotiation's cadence. Routine movements might be approved by the chief compliance officer or general counsel. Material movements might go to senior leadership. Amounts above a defined threshold might need the board. Each threshold should be set in advance, communicated to counsel and tested before negotiation starts. The middle of a settlement is the wrong time to discover that the approval chain is slower than the negotiation.

7.3 Why It Pays

Counsel knows what can be committed in the room. The entity knows when its approval will be needed. The regulator sees an organized, decisive counterparty. Entities without the structure defer everything, which is slower and more expensive, and the structure costs little to design next to what deferral costs.

> **From the Practice**
>
> The authority structure defines what counsel can commit, what needs approval, who approves and on what timeline. Put all four in writing before negotiation.
>
> The regulator calibrates its posture to what it perceives about the entity's authority.

8 Closing the Matter and the Notice of Penalty

Closure is its own discipline. The Notice of Penalty and NERC's public posting are the record the entity will live with, and they deserve the same care as the negotiated terms.

8.1 From Executed Agreement to NERC Approval

The CEA and the entity execute a settlement agreement setting out the final terms, including all penalties, sanctions and mitigation requirements. The CEA reports the terms to NERC, and NERC reviews the settlement for consistency with other settlements for similar violations or in similar circumstances. NERC then approves the settlement, or rejects it and tells the CEA what changes would lead to approval. The CEA passes that on to the entity within five business days. If NERC rejects the settlement, the CEA will try to negotiate a revised agreement that includes NERC's changes.

The practical point is that the agreement the entity signs is not final until NERC approves it. Counsel should be ready for a second, shorter negotiation if NERC asks for changes, with the authority structure from Chapter 7 still in force.

8.2 The Notice of Penalty Filing

Once a settlement agreement is reached, NERC submits a Notice of Penalty to FERC. The registered entity does not file it. The CEA must tell the entity at least five business days before the public filing and posting that a Notice of Penalty is pending, and NERC files no sooner than five business days after it approves the settlement. NERC includes the entity's explanatory statement with the filing.

Under section 215(e) of the Federal Power Act and 18 CFR 39.7, a penalty may take effect no earlier than the thirty-first day after NERC files the notice of penalty and the record. FERC may review it on its own motion, or on an application for review that the penalized entity files within thirty days. If neither happens, the penalty is affirmed by operation of law when that period ends. Under 18 CFR 39.7(b)(4), a violation stays nonpublic until it is filed with FERC as a notice of penalty or resolved by an admission, a settlement or another negotiated disposition. A disposition that relates to a Cybersecurity Incident, or that would jeopardize the security of the Bulk-Power System if disclosed, stays nonpublic unless FERC directs otherwise.

After FERC approves the Notice of Penalty, or its period for action expires, the CEA issues a payment due notice and invoice, with payment due thirty days from the date of the notice. When all requirements of the Notice of Penalty and the settlement agreement are complete, the CEA issues a Notice of Completion of Enforcement Action.

8.3 Who Reads the Public Record

The Notice of Penalty and NERC's posting are read by FERC staff, by industry observers who track enforcement, by the entity's other regulators and potentially by counterparties in later matters. The entity does not write NERC's filing, but it shapes it through the settlement language, the recitals and its explanatory statement. That is why those pieces get line-by-line review before execution, with all of those audiences in mind and not only FERC.

8.4 Internal Closure Documentation

Internal closure documentation includes the privileged after-action memorandum described in EC-WP-801, the operational lessons document for the compliance team, and the compliance program updates the matter has prompted. This is the entity's own record of the matter, separate from the public one, and it is what lets the entity learn from the matter and improve before the next one. Entities that close a matter without it lose what the matter taught.

8.5 Feed the Lessons Back Into the Framework

Closure is also the moment to update the entity's legal-compliance operating framework. The framework described in EC-WP-800 is not static. Each enforcement matter produces evidence about what worked and what did not, and the framework should change accordingly. Entities that close a matter and slide back to their old operating posture waste the opportunity. Entities that build the lessons into the framework arrive at the next matter better prepared than they were for this one.

> **From the Practice**
>
> The agreement is not final until NERC approves it. Be ready for a short second negotiation if NERC asks for changes.
>
> NERC files the Notice of Penalty and posts the settlement. The entity shapes that record through the agreement's language and its explanatory statement. Draft accordingly.
>
> Internal closure documentation captures what the matter taught. Feed it back into the legal-compliance framework. That improvement is the real return on the matter.

Glossary

Term	Meaning in this paper
Alleged Violation	A potential noncompliance for which the CEA has determined, after assessing the facts and circumstances, that evidence exists to indicate a Reliability Standard violation, and that will be resolved outside the Compliance Exception or Find, Fix, Track and Report processes.
CMEP	The NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure. Section 5.6 governs settlement.
Compliance Enforcement Authority (CEA)	NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the Reliability Standards.
Confirmed Violation	An Alleged Violation that the entity has accepted or not contested, that a final order has found, for which the time to request a hearing or appeal has expired, or that the entity has resolved by executing a settlement agreement.
Explanatory statement	The entity's own written statement, signed by an authorized representative, that may be included in a settlement agreement with the CEA's consent and is filed with the Notice of Penalty.
Mitigating Activities	Actions a registered entity takes to correct a noncompliance and prevent its recurrence, whether or not they are set out in a Mitigation Plan.
Mitigation Plan	An action plan the registered entity develops to correct a noncompliance and prevent the violation from recurring.
NAVAPS	Notice of Alleged Violation and Proposed Penalty or Sanction. The CEA's written notice of an Alleged Violation, including the facts relied on and the proposed penalty with its basis under the Sanction Guidelines.
Notice of Completion of Enforcement Action	The CEA's notice under CMEP Section 5.10 that an enforcement action is closed. It is issued once the entity completes all requirements of the Notice of Penalty and any settlement agreement, or when the CEA dismisses the matter.
Notice of Penalty	NERC's filing with FERC, after NERC approves a Notice or other notification of Confirmed Violation, or a settlement agreement, stating the penalty or sanction imposed or agreed to.
Notice of Preliminary Screen	The CEA's notice that a potential noncompliance has been identified, with an instruction to retain and preserve related records.
Recitals	The statements of fact in a settlement agreement that the entity acknowledges.
Sanction Guidelines	Appendix 4B to the NERC Rules of Procedure, which sets the three-step method for determining monetary penalties and the factors that adjust them.

How Energy Compliance Can Help

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, function, regulatory posture and the procedural 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); and Legal-Compliance Integration (operating frameworks built before enforcement arrives).

Energy Compliance services and platforms

- Data request strategy: answering Regional Entity requests in the order and form that support the entity's settlement position.
- Compliance program management: tracking and evidencing settlement operating terms through to the Notice of Completion of Enforcement Action.
- Audit defense: preparing for the audits that test whether settlement commitments held.
- WattOps Compliance: EC's NERC compliance evidence platform (wattopscompliance.com). Penalty arguments under the Sanction Guidelines turn on facts the entity can prove, such as its compliance program and its mitigation. 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 a matter turns on what a wind, solar or storage facility was actually doing, its operations data belongs in the record before the negotiation starts.

If a settlement offer or a NAVAPS is on your desk, or you want the framework in place first, call or write.

Website: energycomplianceinc.com · Email: rsmith@complianceforenergy.com

Phone: 763.438.4427

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 market participation rules, Regional Entity oversight, and state regulatory 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 the North American Electric Reliability Corporation, the Federal Energy Regulatory Commission, 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 5.0 through 5.10. 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 3.1 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.govinfo.gov/link/uscode/16/824o
- 18 CFR 39.7, Enforcement of Reliability Standards, Code of Federal Regulations, Title 18, Chapter I (April 1, 2025 edition), govinfo. https://www.govinfo.gov/link/cfr/18/39?sectionnum=7&year=mostrecent&link-type=html
- 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
- Energy Compliance, Inc. and Stich Angell, P.A., EC-WP-801, Notice of Penalty Response Strategy (Legal Series). https://energycomplianceinc.com

© Energy Compliance, Inc. · EC-WP-802 · Status as of October 25, 2026