
**BEFORE THE
NATIONAL ENERGY BOARD**

**NORTH AMERICAN ELECTRIC)
RELIABILITY CORPORATION)**

**NOTICE OF FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
OF REVISIONS TO ITS RULES OF PROCEDURE
TO ADOPT A BULK ELECTRIC SYSTEM EXCEPTION PROCEDURE**

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List of Attachments

Attachment 1: Proposed Appendix 5C to the Rules of Procedure, *Procedure for Requesting and Receiving an Exception from the NERC Definition of Bulk Electric System*

Attachments 2A and 2B: Clean and Redlined Versions of the Revised Rules of Procedure, Sections 100-1700 (including proposed new Sections 509 and 1703)

Attachments 3A and 3B: Clean and Redlined Versions of Revised Appendix 2 of the Rules of Procedure – *Definitions Used in the Rules of Procedure*

Attachments 4A and 4B: Clean and Redlined Versions of Revised Appendix 3D of the Rules of Procedure – *Registered Ballot Body Criteria*

Attachments 5A and 5B: Clean and Redlined Versions of Revised Appendix 4B of the Rules of Procedure – *Sanction Guidelines of the North American Electric Reliability Corporation*

Attachments 6A and 6B: Clean and Redlined Versions of Revised Appendix 5B of the Rules of Procedure – *Statement of Compliance Registry Criteria*

Attachments 7A and 7B: Clean and Redlined Versions of Revised Appendix 6 of the Rules of Procedure – *System Operator Certification Program Manual*

Attachments 8A and 8B: Clean and Redlined Versions of Revised Appendix 8 of the Rules of Procedure – *NERC Blackout and Disturbance Response Procedures*

Attachment 9: “The Development Process and Basis for the RoP Team’s Recommended Provisions – Including How Stakeholder Comments Were Considered and Addressed,” prepared by the BES Rules of Procedure Team

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) respectfully provides notice of revisions to NERC’s Rules of Procedure (“ROP”) for the purpose of adopting a procedure for requesting and receiving exceptions from the NERC definition of Bulk Electric System (“BES Exception Procedure”), as directed by the Federal Energy Regulatory Commission (“FERC”) in Order No. 743.¹ NERC provides notice of the following revisions and additions to the ROP:

- Proposed new Appendix 5C to the ROP, *Procedure for Requesting and Receiving an Exception to the NERC Definition of Bulk Electric System* (**Attachment 1**)
- Proposed new Sections 509 (“Exceptions to the Definition of the Bulk Electric System”) and 1703 (“Challenges to NERC Determinations of BES Exception Requests Under Section 509”) of the ROP (included in **Attachments 2A** (clean) and **2B** (redlined))²
- Revisions to sections 302.2.2, 501.1.4.4, 804, 1102.2 and 1701 of the ROP to reflect the adoption of the revised BES Definition and new section 1703 and Appendix 5C of the ROP (these revisions are shown in **Attachments 2A** and **2B**).
- Revisions to Appendix 2 to the ROP, *Definitions Used in the Rules of Procedure* (**Attachments 3A** (clean) and **3B** (redlined))³

¹ *Revision to Electric Reliability Organization Definition of Bulk Electric System*, 133 FERC ¶ 61,150 (2011) (“Order No. 743”); *Order on Rehearing*, 134 FERC ¶ 61,210 (2011) (“Order No. 743-A”).

² On December 20, 2011, NERC filed notice of revisions to sections 100-1600 of the ROP. Further, on November 7, 2011, NERC made a compliance filing with FERC in Docket No. RR10-11-004 in response to an October 7, 2011 Order, to amend one section of the Rules of Procedure. *Compliance Filing of the North American Electric Reliability Corporation in Response to October 7, 2011 Order*. In addition, on April 13, 2011, NERC filed proposed new sections 1701 and 1702 of the ROP in connection its Reliability Standard PRC-023-2 filing. **Attachments 2A** and **2B** incorporate the revisions to the ROP filed in the December 20, 2011 ROP Revisions Filing and the November 7, 2011 FERC compliance filing, and to ROP sections 1701-1702 filed on April 13, 2011.

³ NERC filed proposed Appendix 2, as a new appendix to the ROP, on December 20, 2011. **Attachments 3A** and **3B** are based on Appendix 2 as filed in the December 20, 2011 ROP Revisions filing.

- Revisions to Appendix 3D to the ROP, *Registered Ballot Body Criteria* (**Attachments 4A** (clean) and **4B** (redlined)).⁴
- Revisions to Appendix 4B to the ROP, *Sanction Guidelines of the North American Electric Reliability Corporation* (**Attachments 5A** (clean) and **5B** (redlined)).⁵
- Revisions to Appendix 5B to the ROP, *Statement of Compliance Registry Criteria* (**Attachments 6A** (clean) and **6B** (redlined)).⁶
- Revisions to Appendix 6 to the ROP, *System Operator Certification Program Manual* (**Attachments 7A** (clean) and **7B** (redlined)).⁷
- Revisions to Appendix 8 to the ROP, *NERC Blackout and Disturbance Response Procedures* (**Attachments 8A** (clean) and **8B** (redlined)).⁸

In Order No. 743, FERC directed NERC to develop, using its Reliability Standards development process, a revised definition of the term “Bulk Electric System” (“BES Definition”);⁹ and to also develop, through a stakeholder process, a process to exempt facilities

⁴ The December 20, 2011 ROP Revisions Filing included proposed revisions to Appendix 3D. **Attachments 4A** and **4B** incorporate the revisions to Appendix 3D submitted in the December 20, 2011 ROP Revisions Filing.

⁵ The December 20, 2011 ROP Revisions Filing included proposed revisions to Appendix 4B. **Attachments 5A** and **5B** incorporate the revisions to Appendix 4B submitted in the December 20, 2011 ROP Revisions Filing.

⁶ The December 20, 2011 ROP Revisions Filing included proposed revisions to Appendix 5B. **Attachments 6A** and **6B** incorporate the revisions to Appendix 5B submitted in the December 20, 2011 ROP Revisions Filing.

⁷ The December 20, 2011 ROP Revisions Filing included proposed revisions to Appendix 6. **Attachments 7A** and **7B** incorporate the revisions to Appendix 6 submitted in the December 20, 2011 ROP Revisions Filing.

⁸ The December 20, 2011 ROP Revisions Filing included proposed revisions to Appendix 8. **Attachments 8A** and **8B** incorporate the revisions to Appendix 8 submitted in the December 20, 2011 ROP Revisions Filing.

⁹ Order No. 743 at PP 29-33.

from inclusion in the Bulk Electric System through application of the BES Definition.¹⁰ FERC directed NERC to file the revised BES Definition and the exemption procedure within one year following the effective date of the final rule adopted in Order No. 743.

As directed in Order No. 743, NERC has developed both a revised BES Definition and a proposed BES Exception Procedure.¹¹ NERC is submitting the revised BES Definition in a separate filing that is being filed contemporaneously with the instant filing.

The proposed BES Exception Procedure addresses the applicable concerns raised by FERC, in Order No. 743, with respect to the current processes for determining what facilities are part of the BES and what facilities are not.¹² The BES Exception Procedure provides for decisions to approve or disapprove Exception Requests¹³ to be made by NERC, rather than by the Regional Entities, thereby eliminating the potential for inconsistency and subjectivity that FERC was concerned was created by having decisions as to what facilities are included in or excluded from the BES made at the Regional Entity level.

This filing also includes proposed conforming revisions to sections 302.2, 501.1.4.4, 804, 1102.2 and 1701 of the ROP and to Appendices 2, 3D, 4B, 5B, 6 and 8 of the ROP which are

¹⁰ Order No. 743 at PP 112-13.

¹¹ Proposed Sections 509 and 1703 and Appendix 5C use the term “exception” rather than the term “exemption” used in Order No. 743. Use of the term “exception” is consistent with the terminology used in section 411 of the ROP and Appendix 4D pertaining to requests for Technical Feasibility Exceptions (“TFE”) from NERC Critical Infrastructure Protection Standards.

¹² As shown in the separate petition being filed contemporaneously for approval of the revised BES Definition, the revised BES Definition fully addresses the concerns FERC expressed in Order No. 743 with respect to the current definition of Bulk Electric System and its application to determine what facilities are included in or excluded from the BES.

¹³ Capitalized terms used in this Petition, such as “Exception Requests,” that are not otherwise defined herein, are defined terms in proposed Appendix 5C, or in proposed ROP Appendix 2.

necessary in light of the revised BES Definition and the new BES Exception Procedure provisions in section 1703 and Appendix 5C. The revisions to Appendix 2, *Definitions Used in the Rules of Procedure*, add new defined terms that are used in the revised BES Definition or in proposed Appendix 5C, modify certain other definitions to distinguish their meanings as used in Appendix 5C from their meanings as used elsewhere in the ROP, and make minor revisions to other definitions resulting from adoption of the revised BES Definition. The revision to Appendix 5B, *Statement of Compliance Registry Criteria*, replaces the existing BES Definition with the revised BES Definition in the text of Appendix 5B. The revision to section 1701 of the ROP is necessary to reference the addition of new section 1703 to section 1700. The revisions to sections 302.2.2, 501.1.4.4, 804 and 1102.2 of the ROP and to Appendices 3D, 4B, 6 and 8 are necessary to reflect capitalization of certain terms that become defined terms in the ROP as the result of the revised BES Definition.

The NERC Board of Trustees voted to adopt the proposed ROP revisions, including proposed new Appendix 5C and proposed new sections 509 and 1703 of the ROP, on January 18, 2012.

Attachment 1 to this Notice is the proposed Appendix 5C to the ROP, *Procedure for Requesting and Receiving an Exception from the NERC Definition of Bulk Electric System*. **Attachments 2A** and **2B** are clean and redlined versions of the ROP, Sections 100-1700, showing proposed new Sections 509 and 1703 and the revisions to other sections as enumerated above. **Attachments 3A** and **3B** are clean and redlined versions of proposed revised Appendix 2 to the ROP, *Definitions Used in the Rules of Procedure*. **Attachments 4A** and **4B** are clean and redlined versions of proposed revised Appendix 3D to the ROP, *Registered Ballot Body Criteria*. **Attachments 5A** and **5B** are clean and redlined versions of proposed revised Appendix 4B to the

ROP, *Sanction Guidelines of the North American Electric Reliability Corporation*. **Attachments 6A** and **6B** are clean and redlined versions of proposed revised Appendix 5B to the ROP, *Statement of Compliance Registry Criteria*. **Attachments 7A** and **7B** are clean and redlined versions of proposed revised Appendix 6 to the ROP, *System Operator Certification Program Manual*. **Attachments 8A** and **8B** are clean and redlined versions of proposed revised Appendix 8 to the ROP, *NERC Blackout and Disturbance Response Procedures*. **Attachment 9**, captioned “The Development Process and Basis for the RoP Team’s Recommended Provisions – Including How Stakeholder Comments Were Considered and Addressed,” was prepared by the stakeholder-based BES Rules of Procedure Team (“BES ROP Team”) that developed a proposed Exception Procedure on which Appendix 5C and ROP sections 509 and 1703 are based. **Attachment 9** describes the process that was followed by the BES ROP Team in developing these documents, and key issues that were identified and addressed by the Team in the course of developing its proposals.

Appendix 5C and the other proposed ROP revisions will have the same effective date as the proposed effective date of the revised BES Definition, as discussed in NERC’s separate filing of the revised BES Definition.

NERC filed the proposed revisions to the ROP, including proposed new Sections 509 and 1703 and Appendix 5C, with FERC, and is also filing the proposed revisions to the ROP, including proposed new Sections 509 and 1703 and Appendix 5C, with the other Applicable Governmental Authorities in Canada.

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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III. PROPOSED REVISIONS TO THE RULES OF PROCEDURE

A. Order Nos. 743 and 743-A

In Order No. 743, FERC directed NERC to develop a process for exempting facilities from being included in the BES by the application of the BES Definition.

[W]e direct the ERO to develop a proposed exemption process. We believe that it is appropriate that NERC develop the process in its function as the ERO. Further, allowing the ERO to develop an appropriate exemption process should provide interested stakeholders an opportunity to participate in the development of the process, as requested by some commenters.¹⁴

FERC also expressed a number of concerns that it believed needed to be addressed in the development of the exemption process.

¹⁴ Order No. 743 at P 112.

P 115. “NERC should develop an exemption process that includes clear, objective, transparent, and uniformly applicable criteria for exemption of facilities that are not necessary for operating the grid. The ERO should also determine any related changes to its Rules of Procedure that may be required to implement the exemption process, and file the proposed exemption process and rule changes with the Commission.”

P 116. “. . . [W]e no longer contemplate a process that requires Commission review of each request for exemption. However, in order to avoid an inconsistent application of the exemption process, NERC should oversee the facility-by-facility exemption process to ensure an objective and uniform application of the exemption criteria that it develops. NERC may consider delegating responsibilities for the exemption process to Regional Entities, so long as the process is clear and capable of being applied consistently, objectively and uniformly across all regions. However, consistent with our statements in Order No. 672 concerning the need for a strong ERO, NERC should maintain oversight of any Regional Entity activity. We believe ERO oversight is also vital in ensuring consistent application of any nation-wide exemption criteria that the ERO develops.” (Footnote omitted.)

P 117. “While the Commission will not require that we review each exemption on a facility-by-facility basis, we would maintain the authority to conduct audits to determine the appropriateness of a particular exemption. We contemplate that a Commission staff audit would review the application of the exemption criteria developed by NERC in NERC’s or a Regional Entity’s determination to approve an exemption for a particular facility. However, to facilitate such audits, the ERO should maintain a list of exempted facilities that can be made available to the Commission upon request. NERC can decide how best to maintain the list, including determining whether or not to post it on the NERC website.”

P 118. “Additionally, the ERO should consider developing criteria for revoking an exemption if a particular transmission facility no longer qualifies for such an exemption. This may be appropriate, for example, when a transmission system in the vicinity undergoes a significant change.”

P 119. “. . . [T]he exemption process provides a means of ensuring that relatively high voltage distribution facilities are excluded from compliance with mandatory Reliability Standards. In this light, we believe that it would be beneficial for the ERO in maintaining a list of exempted facilities, to consider including a means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition. Similarly, the ERO could track exemptions for radial facilities.”

P 120. “In response to comments seeking a blanket exemption for industrial facilities, the Commission is not inclined to grant categorical exemptions of any kind. However, NERC should consider the parties’ concerns regarding exemption

categories in developing an exemption process and criteria. Entities can submit specific facilities for exemption through the NERC-developed exemption process”

P 121. “We agree with ERCOT’s suggestion that the ERO should develop a parallel process for including as part of the bulk electric system ‘critical’ facilities, operated at less than 100 kV, that the Regional Entities determine are necessary for operating the interconnected transmission network. Currently, Regional Entities have the ability to include ‘critical’ facilities operated below 100 kV. We believe that it would be worthwhile for NERC to consider formalizing the criteria for inclusion of critical facilities operated below 100 kV in developing the exemption process. Additionally, we note that Order No. 716 creates a process to include critical facilities under NUC-001-1. Similarly, we note that Order No. 733 creates an additional ‘add in’ approach to sub-100 kV facilities that Regional Entities and planning coordinators have identified as critical to the reliability of the bulk electric system.” (Footnotes omitted.)

P 150. “We disagree with commenters that definitions of ‘integrated transmission elements’ and ‘material impact’ are needed to implement this Final Rule. These terms are not defined by the present bulk electric system definition, and defining these terms is not necessary to revise the definition as directed herein. Whether specific facilities have a material impact is not dispositive with respect to whether they are needed for reliable operation. These questions are more appropriately addressed through development of an exemption process at NERC.”

In Order No. 743-A, FERC provided additional clarification with respect to the scope of the exemption process.

P 76. “The Commission notes some confusion regarding ‘exclusions’ versus ‘exemptions.’ We understand that a facility that is *excluded* would not have to go through any process at NERC to determine applicability. On the other hand, where an entity applies to NERC to seek to *exempt* its facility from the bulk electric system, NERC would follow an *exemption* process. With that understanding, we clarify that, as discussed herein, we envision that the process for determining which facilities will be included under the bulk electric system will involve several steps. NERC will develop criteria for determining whether a facility that falls under the definition of bulk electric system may qualify for exclusion. If, for example, the application of the criteria clearly indicates that a facility is local distribution, the facility is excluded, and no process before the ERO is required. If application of the NERC criteria does not lead to a definitive result, the entity could apply for an exemption, invoking a factual inquiry before the ERO to determine the proper categorization of facilities.” (Italics in original.)

P 84. “In Order No. 743, . . . while the Commission stated that the ERO should develop an exemption process that includes ‘clear, objective, transparent, and

uniformly applicable criteria' for determining exemptions, the Commission otherwise left it to the ERO's discretion to develop an appropriate exemption process, which the Commission will review. Any exemption of radial facilities is not based on a statutory requirement, unlike exclusion of local distribution. However, the Commission believes that certain categories of radial facilities may lend themselves to an 'exclusion' process as described above (i.e., once identified as belonging to a certain radial category, the facilities could be excluded without further review). For example, should the revised bulk electric system definition maintain the exclusion of radial facilities serving only load from one transmission source, these types of facilities easily could be excluded without further analysis."

P 86. "The Commission clarifies that Order No. 743 granted NERC discretion to make a determination regarding whether to exclude or exempt radial facilities. One consideration in this regard is whether an exclusion process will avoid NERC having to review thousands of exemptions for facilities outside the NPCC region that previously were excluded as radial."

P 88. "With respect to Consumers' request for clarification regarding how much incidental generation a line could serve and continue to meet the bulk electric system radial line exclusion, this is an issue that should be raised with NERC as it develops criteria for determining what is considered radial."

P 98. "Order No. 743 directed the ERO to develop an exemption process, and specifically declined to 'dictate the substance or content of the exemption process.' However, we provided guidance, stating that the process should include clear, objective, transparent and uniformly applicable criteria for exemption of facilities that are not necessary for operating the interconnected transmission system. Accordingly, the Commission grants EEI's, Consumers Energy's and Wisconsin Electric's requests for clarification that the discussion regarding which facilities should or should not be included in the bulk electric system definition was intended to provide guidance, not to prejudge what should be included in the exemption criteria. . . ."

As discussed in the balance of this §III, the proposed Exception Procedure appropriately addresses FERC's directives and concerns expressed in Order Nos. 743 and 743-A with respect to the exemption procedure. In addition, in §V below, NERC acknowledges the need to maintain a list of facilities that have been granted Exceptions from the BES Definition, as indicated in Order No. 743.

B. Proposed Section 509 of the Rules of Procedure

Proposed new Section 509 of the ROP, “Exceptions to the Definition of the Bulk Electric System,” identifies the availability of the procedure in Appendix 5C to request a determination that an Element that falls within the BES Definition should be excluded from the BES or that an Element that falls outside of the BES Definition should be included in the BES:

An Element is considered to be (or not be) part of the Bulk Electric System by applying the BES Definition to the Element (including the inclusions and exclusions set forth therein). Appendix 5C sets forth the procedures by which (i) an entity may request a determination that an Element that falls within the definition of Bulk Electric System should be exempted from being considered a part of the Bulk Electric System, or (ii) an entity may request that an Element that falls outside the definition of the Bulk Electric System should be considered a part of the Bulk Electric System.

Section 509 specifies that the Exception Procedure in Appendix 5C is available with respect to (i) Elements that are considered to be part of the BES by applying the BES Definition, and (ii) Elements that are not considered to be part of the BES based on applying the BES Definition, but which the Submitting Entity believes should be excluded from or included in, respectively, the BES. The Exception Procedure is not intended to be used to resolve ambiguous situations in which it cannot be determined by applying the BES Definition whether an Element is part of or not part of the BES.

C. Proposed Appendix 5C to the Rules of Procedure

1. Overview

Proposed Appendix 5C sets forth the detailed procedures for requesting and receiving an Exception from inclusion in or exclusion from the Bulk Electric System based on application of the BES Definition. As discussed in greater detail in §IV below, following the issuance of Order No. 743, NERC established a stakeholder-based BES ROP Team to develop a proposed Exception Procedure. The BES ROP Team developed a proposed Exception Procedure which

the Team submitted to NERC. As also discussed in §IV, proposed Appendix 5C as approved by the NERC Board and submitted for approval in this filing incorporates several modifications to the BES ROP Team's proposal, both revisions recommended by NERC staff and revisions directed by the NERC Board of Trustees. However, the basic structure and concepts of the proposed Exception Procedure for which approval is requested herein are the same as in the BES ROP Team's proposal.

Taking into account the directives and concerns set forth in Order Nos. 743 and 743-A, the BES ROP Team considered several process attributes to be important in developing the Exception Procedure:

- The Exception Procedure should maintain the exemption for facilities used in the local distribution of electric energy and the exemption for radial facilities.
- The Exception Procedure, including the criteria for allowing Exceptions, should be clear, objective, transparent and uniformly applicable.
- The Exception Procedure should allow any Registered Entity to utilize the process to seek an Exception either for its own facilities or for the facilities of others with respect to which the Registered Entity has ERO-related reliability responsibilities.
- NERC should be the ultimate decision-maker for Exception Requests, in order to retain facility-by-facility oversight of the objective and uniform application of the Exception criteria.
- The Exception Procedure should include provisions for revoking a previously-granted Exception for a facility if the Exception is no longer warranted.

With respect to establishing criteria for Exceptions, the proposed Exception Procedure establishes specific steps to be followed in submitting, reviewing and deciding Exception Requests. It also specifies detailed Required Information that must be submitted with an Exception Request, or it will be rejected. In terms of technical criteria for allowing Exceptions, it was determined jointly by the NERC Standards Committee, NERC Reliability Standards Program management, the leaders of the BES Definition Standard Drafting Team ("SDT") and

the BES ROP Team that the SDT would take responsibility for determining the technical criteria for Exceptions. As discussed in detail in §III.D of NERC’s petition for approval of the proposed BES Definition, which is being filed contemporaneously with this Petition, the SDT determined that developing a single set of technical criteria that would be applicable to all Exception Requests was not feasible. The SDT determined, instead, that a common set of data and information that the Submitting Entity would be required to submit with each Exception Request should be developed (the “Detailed Information to Support an Exception Request”). The Detailed Information is intended to ensure that a consistent baseline of technical information is provided to the Regional Entity and NERC with all Exception Requests, in addition to the specific information and arguments submitted by the Submitting Entity in support of its Exception Request. The Submitting Entity remains responsible to present sufficient information and argument to justify the Exception Request.¹⁵

Additionally, several significant issues were identified during development of the Exception Procedure (some of these were raised by stakeholder comments) that the BES ROP Team needed to address. These issues generally fell into the following categories:

- Who is eligible to initiate and/or participate in the process by which an Exception is granted? What is the role of state regulators?
- What should be the scope of the Elements for which an Exception can be requested in a single Exception Request?
- Should an entity that is unable to determine the status of an Element by applying the BES Definition be able to use the Exception Procedure to obtain a determination?
- What is the appropriate balance between allowing open access to the Exception process and ensuring the resources of NERC and the Regional Entities are spent processing and analyzing valid, permissible requests?

¹⁵ See section 3.2 of proposed Appendix 5C.

- What is the appropriate balance between allowing open access to the Exception process and an appropriate level of consistency, respecting the varied roles and proper exercise of discretion by each participant?
- How transparent should the Exception process be? In addition to the Submitting Entity (and Owner of the facility, if different), should any entities other than the Regional Entity, NERC, the Commission, and Applicable Governmental Authorities in Canada, be allowed access to facility-specific information filed with an Exception Request?
- What should be the status for compliance purposes of an Element during the pendency of the request?

These and other issues were resolved in the development of the BES Exception Procedure, and their resolution is reflected in proposed Appendix 5C.¹⁶

The Exception Procedure developed by the BES ROP Team – and, with relatively minor modifications, approved by the NERC Board and submitted in this filing – provides, for most circumstances, a fairly simple and direct process of discrete steps:

1. An entity applies the BES Definition to an Element, but nonetheless believes that the Element, contrary to its characterization based on the BES Definition, should either be included in or excluded from the BES. The entity therefore submits an Exception Request to the Regional Entity in which the Element is located.
2. The Regional Entity receives the Exception Request.
 - a. The Regional Entity conducts an initial screening looking for three items to determine if the Exception Request is a valid request for processing:
 - i. Is the Exception Request from an eligible submitter?
 - ii. Is the Exception Request a request for an Exception from the BES Definition?
 - iii. Is all the Required Information provided with the Exception Request?

If the initial answer to each question is yes, the Exception Request is moved along in the process to a substantive review. If the answers to all questions are not yes,

¹⁶ See **Attachment 9** for further discussion of how the BES ROP Team addressed these issues and other stakeholder concerns.

the submitter is given an opportunity to modify or supplement the Exception Request before the Regional Entity rejects it.

- b. The Regional Entity substantively evaluates the Exception Request and makes a recommendation to NERC as to whether it should be approved or disapproved.
3. NERC reviews the Exception Request and all information developed at the Regional Entity level, and either approves or disapproves the Exception Request.
4. The Submitting Entity either accepts the NERC decision, or appeals it to the NERC Board of Trustees Compliance Committee (“BOTCC”).

Importantly, in response to FERC’s directives and concerns expressed in Order Nos. 743 and 743-A, the decision as to whether to approve or disapprove an Exception Request is made only by NERC. The Regional Entity performs a non-substantive initial screening of the Exception Request and, if the Exception Request passes the initial screening, conducts a substantive review and makes a recommendation to NERC as to whether the Exception Request should be approved or disapproved. However, the actual decision to approve or disapprove the Exception Request is made by the NERC President after considering the opinion provided by a three-person NERC review panel (as well as the Recommendation of the Regional Entity and other information placed into the record at the Regional Entity and NERC levels). Further, if the Regional Entity rejects the Exception Request based on the initial screening but the Submitting Entity believes the Exception Request is proper and complete as submitted, the Exception Procedure allows the Submitting Entity to appeal the Rejection to NERC.

Placing the decision-making responsibility with NERC will provide for a consistent approach to and determination of Exception Requests coming from Submitting Entities in all Regions, thereby eliminating Regional Entity discretion in the determination of Exception Requests. Further, not only will NERC be able to provide consistent determinations on Exception Requests coming from Submitting Entities in different Regions but involving the same

or similar facts and circumstances, but NERC, as the sole decision-maker, will be able to take into account the aggregate impact on the BES of approving or disapproving all the Exception Requests submitted. NERC's ability to provide for consistency and to assess aggregate impacts is enhanced by the provision added to Appendix 5C at the direction of the NERC Board (as described in §IV below) specifying that the final decision on all Exception Requests will be issued by the NERC President.

Additionally, the proposed Exception Procedure includes provisions for requesting and approving an Inclusion Exception, by which an Element that the BES Definition would not include in the BES can be included in the BES.¹⁷ A request for an Inclusion Exception can be submitted by the Owner of an Element, or by a Regional Entity, Planning Authority ("PA"), Reliability Coordinator ("RC"), Transmission Operator ("TOP"), Transmission Planner ("TP") or Balancing Authority ("BA") that has the Element within its Scope of Responsibility.¹⁸

Finally, the Exception Procedure also includes provisions for monitoring that an Exception that has been granted continues to be warranted, and for revoking an Exception that is no longer warranted.¹⁹

In Order No. 743-A, FERC noted that NERC would need to determine whether local distribution facilities and radial facilities would be "excluded" from the BES, or "exempted" through the exemption process.²⁰ The proposed BES Definition expressly excludes both

¹⁷ See Order No. 743 at P 121.

¹⁸ Scope of Responsibility is defined in section 2.26 of Appendix 5C as "The registered functions of a PA, RC, TOP, TP or BA and the geographical or electric region in which the PA, RC, TOP, TP or BA operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region."

¹⁹ See Order No. 743 at P 118.

²⁰ Order No. 743-A at PP 76, 84, 86 and 88.

“facilities used in the local distribution of electric energy,” and radial systems as described in Exclusion E1 of the BES Definition, from the Bulk Electric System.²¹ Therefore, it was not necessary for the BES Exception Procedure to contain detailed criteria or procedures to exempt local distribution facilities or radial facilities from inclusion in the Bulk Electric System.

In summary, the proposed Exception Procedure establishes a process that (1) balances the need for effective and efficient administration with due process and clarity of expectations; (2) promotes consistency in determinations and eliminates Regional discretion by having all decisions on Exception Requests made at NERC; (3) provides for involvement of persons with applicable technical expertise in making decisions on Exception Requests; and (4) should alleviate concerns about a “one-size-fits-all” approach.

2. Section-by-Section Summary of Proposed Exception Procedure

The following subsections provide a section-by-section summary of the Exception Procedure in proposed Appendix 5C.

a. Section 1.0 – Introduction

Section 1.1, Purpose, states the purpose of Appendix 5C:

The NERC definition of the Bulk Electric System uses specific terms and thresholds that, in most cases, should appropriately identify Elements and groups of Elements that are appropriately classified as part of the Bulk Electric System. Conversely, the BES Definition should, in most cases, exclude Elements that are not part of the Bulk Electric System. In certain cases, however, the BES Definition may classify certain Elements as part of the Bulk Electric System that are not necessary for the Reliable Operation of the interconnected bulk-power transmission system or the BES Definition may classify certain Elements as non-Bulk Electric System that are necessary for the Reliable Operation of the interconnected bulk-power transmission system.

This Appendix . . . provides the procedure by which an entity may request and receive an Exception which will have the effect of either including within the

²¹ See the discussion in §III.C of NERC’s contemporaneously-filed petition for approval of the revised BES Definition.

BES an Element or Elements that would otherwise be excluded by application of the BES Definition or excluding from the BES an Element or Elements that would otherwise be included by application of the BES Definition.

Section 1.1 also states the status of an Element until the time that an Exception from the BES Definition has been requested and granted:

An entity must request and obtain an Exclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is included in the BES by application of the BES Definition shall be excluded from the BES. Likewise, an entity must request and obtain an Inclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is excluded from the BES by application of the BES Definition shall be included in the BES.

During the pendency of an Exception Request, the status of an Element(s) that is the subject of an Exception Request shall remain as it is determined based on application of the BES Definition. This status will continue until all appeals to all Applicable Governmental Authorities are completed.

Section 1.1 further provides that an entity planning the connection of a new Element for which it believes an Exception would be appropriate may request an Exception prior to commercial operation of the Element.

Finally, section 1.1 details who is entitled to file an Exception Request. The right to file an Exception Request is not limited to the Owner of the Element that is the subject of the Exception Request. Rather, the Regional Entity or a Registered Entity performing reliability functions that would have the Element within its Scope of Responsibility may submit an Exception Request with respect to the Element:

The Owner of the Element to which the Exception Request applies or, with respect to an Element owned by another Registered Entity, any Regional Entity, Planning Authority (“PA”), Reliability Coordinator (“RC”), Transmission Operator (“TOP”), Transmission Planner (“TP”) or Balancing Authority (“BA”) that has (or will have upon inclusion of the Elements in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the Element as provided in this Exception Procedure.

Section 1.2, Authority, includes a statement relating to adoption of the Exception Procedure or a comparable procedure by Applicable Governmental Authorities in Canada and Mexico: “This Exception Procedure or an equivalent procedure is to be implemented in Canada and Mexico consistent with their respective laws and agreements.”

Section 1.3 states obligations of Canadian and Mexican Entities and Cross-Border Regional Entities with regard to seeking Exceptions from Applicable Governmental Authorities consistent with their respective laws and agreements.²² This section states that a Canadian Entity or Mexican Entity “shall not be required to subject itself to United States federal or state laws not otherwise applicable to the entity in order to utilize this Exception Procedure or an equivalent procedure.”

b. Section 2.0 – Definitions

Section 2.0 sets forth the definitions of defined terms that are frequently used in Appendix 5C. The text of section 2.0 assumes that proposed Appendix 2, *Definitions Used in the Rules of Procedure*, of the ROP is in effect prior to Appendix 5C becoming effective. Therefore, section 2.0 of Appendix 5C states:²³

For purposes of this Appendix, capitalized terms shall have the definitions set forth in Appendix 2 to the Rules of Procedure. For ease of reference, the definitions of the following terms that are used in this Appendix are also set forth below.

This text is consistent with the modified text in a number of existing ROP Appendices (*e.g.*, Appendices 4C and 4D) as submitted in the November 29, 2011 ROP Revisions Filing. If proposed Appendix 5C is approved and becomes effective prior to the effective date of proposed

²² A Canadian Entity is defined in section 2.5 of Appendix 5C as “a Registered Entity that is organized under Canadian federal or provincial law;” and a Mexican Entity is defined in section 2.18 as “a Registered Entity that is organized under Mexican law.”

²³ As noted above, Appendix 2 was filed in the December 20, 2011 ROP Revisions Filing.

Appendix 2, then the above-quoted text should be replaced by the following text, until Appendix 2 is approved and becomes effective:

For purposes of this Appendix, the following terms shall be defined as set forth in this section 2.0. Capitalized terms used in this Appendix that are not defined in this section 2.0 shall have the meanings as defined in, as applicable, (i) the NERC *Glossary of Terms Used in Reliability Standards*, or (ii) section 1.0 of the NERC *Uniform Compliance Monitoring and Enforcement Program*, Appendix 4C to the NERC *Rules of Procedure*, or (iii) page 20 of the Organization Registration and Certification Manual, or (iv) section 1501 of the NERC *Rules of Procedure*.

A number of the defined terms and their definitions in section 2.0 are taken from existing Appendix 4D, including Canadian Entity, Classified National Security Information, Eligible Reviewer, FOIA, NRC Safeguards Information, and Protected FOIA Information.

c. Section 3.0 – Basis for Approval of an Exception

Section 3.1, Grounds for an Exception, identifies the two types of Exception Requests and their grounds – Exclusion Exceptions and Inclusion Exceptions. An Exclusion Exception may be requested and obtained “on the grounds that the Element(s) for which the Exception Request is filed is included within the BES based on application of the BES Definition but is not necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).” An Inclusion Exception may be requested and obtained “on the grounds that the Element(s) for which the Exception Request is filed is not included within the BES based on application of the BES Definition but is necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).”

Section 3.2, Burden, specifies that the burden to provide a sufficient basis for Approval

of an Exception Request is on the Submitting Entity. This provision is consistent with the placement of the burden to justify a Technical Feasibility Exception as set forth in section 3.3 of existing Appendix 4D, the TFE Procedure. This is an important provision because it establishes that where an Element is *included* in the BES by application of the BES Definition, the entity submitting an Exception Request must prove that the Element should not be included in the BES, or else the Element will remain in the BES; and where an Element is *not included* in the BES by application of the BES Definition, the entity submitting the Exception Request must prove that the Element should be included in the BES, or else the Element will continue to be excluded from the BES. Section 3.2 also specifies that all evidence provided as part of an Exception Request or response thereto will be considered in determining whether the Exception Request shall be approved or disapproved.

d. Section 4.0 – Form, Contents, and Submission of an Exception Request

Section 4.1, Eligible Submitting Entities, details what entities may submit Exception Requests:

- The Owner of an Element may submit an Exception Request for either an Inclusion Exception or an Exclusion Exception regarding that Element.
- A Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by a Registered Entity, provided that before doing so, (i) the Submitting Entity conferred with the Owner about the reasons for an Exception, and (ii) could not reach agreement regarding the submission of such an Exception Request. (If the Owner agrees with submitting an Exception Request, the Owner should be the Submitting Entity.)
- A Regional Entity may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by an Owner that is not a Registered Entity.
- An Owner or a Regional Entity may submit an Exception Request for the exclusion from the BES of an Element.

Section 4.2, Separate Submissions for Each Exception Request, specifies as general rules that (i) a separate Exception Request shall be submitted for each Element or set of connected Elements for which the Submitting Entity seeks an Exception, and (ii) a single Exception Request may not be submitted for separate Elements within the geographic boundaries of more than one Regional Entity. Additionally, where the Submitting Entity seeks Exceptions for multiple, similar Elements (all within the boundaries of a single Regional Entity) on the same basis, the Exception Requests for all the Elements may be included in one Exception Request with all the Elements or sets of connected Elements separately identified. Finally, section 4.2 specifies a procedure by which multiple Submitting Entities may jointly file Exception Requests for similar Elements on the same basis; in this situation, one of the Submitting Entities will be designated as the Lead Entity and will submit the Exception Request Form with all Required Information to support the Exception Request.

Section 4.3, Withdrawal of an Exception Request, specifies that a Submitting Entity may withdraw an Exception Request at any time prior to Approval or Disapproval of the Exception Request by NERC.

Section 4.4, Form and Format of Exception Request, specifies that the Exception Request shall consist of three sections. (The required contents of the three sections are enumerated in sections 4.5.1, 4.5.2 and 4.5.3, respectively.) This section also requires that if the Submitting Entity is not the Owner of the Element, the Submitting Entity shall provide a copy of the Exception Request to the Owner (or to the operator(s) of the Element if the Owner is unknown) when the Exception Request is submitted to the Regional Entity.

Section 4.5, Required Information to be Included in the Exception Request, details the Required Information that is to be included in each section of the Exception Request. Section

4.5.1 details the Section I Required Information, section 4.5.2 details the Section II Required Information, and section 4.5.3 describes the Section III Required Information. Each of sections 4.5.1, 4.5.2 and 4.5.3 specifies that failure to provide all of the Required Information for Section I, Section II or Section III, respectively, may result in Rejection of the Exception Request as incomplete.

Section 4.5.1 specifies the Required Information to be included in Section I of the Exception Request. The Section I Required Information is identifying information concerning the Submitting Entity (and Owner, if different), the Exception Request and the Element(s).

Section 4.5.2 specifies the Required Information to be included in Section II of the Exception Request. The Section II Required Information includes (among other things):

- Identification and location of the Element(s) for which the Exception is being requested.
- A statement of the basis on which the Submitting Entity contends the Exception Request should be approved, and if the Submitting Entity is not the Owner, a statement of the basis of the Submitting Entity's reason for submitting the Exception Request.
- A statement, signed and dated by an authorized representative of the Submitting Entity's senior management, stating that the representative has read the Exception Request on behalf of the Submitting Entity and that the Submitting Entity believes Approval of the Exception Request is warranted.

The Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing the Exception Request.

Sections 4.5.1 and 4.5.2 each specifies that at the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section I and Section II to each PA, RC, TOP, TP and BA that has (or will have upon inclusion of the Elements in the BES) the Elements covered by the Exception Request within its Scope of Responsibility.

Section 4.5.3 specifies that Section III of the Exception Request shall contain the Detailed Information to Support an Exception Request as specified on the Exception Request Form. The Detailed Information to Support an Exception Request was developed by the SDT for the BES Definition through the NERC Reliability Standard development process.²⁴ The development and contents of the Detailed Information to Support an Exception Request are described in §III.D of NERC's Petition for approval of the revised BES Definition, which is being filed contemporaneously with this Petition.

Section 4.5.3 states that the Submitting Entity may designate all or part of the Section III Required Information as Confidential Information. It sets forth specific provisions for the handling of and access to any Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is submitted in support of the Exception Request.

Section 4.5.4 provides for information to be submitted by entities in addition to the Submitting Entity:

- If the Owner is different than the Submitting Entity, the Owner may file a response to supplement, correct or disagree with all or any part of the Exception Request.
- Any PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may also provide input to the Regional Entity regarding the request.

Section 4.5.4 also sets forth procedures by which the Owner (if different than the Submitting Entity) or a PA, RC, TOP, TP or BA, in order to enable it to evaluate the Exception Request,

²⁴ Because the Detailed Information to Support an Exception Request was developed and adopted through the Reliability Standard development process, it can only be modified through the Reliability Standard development process, and not through the procedure for revising the ROP.

may request and obtain the Section III Required Information from the Regional Entity. Section 4.5.4 includes provisions to protect, in such a transaction, any Confidential Information included in the Section III Required Information.

Section 4.6, Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information, sets forth provisions by which the Regional Entity can obtain access to any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the Exception Request from the Submitting Entity or Owner, while protecting the confidentiality of the information.

e. Section 5.0 – Review, Acceptance or Rejection, and Recommendation Regarding Exception Requests

Section 5.0 specifies that the Regional Entity’s evaluation of an Exception Request will consist of two stages:

- an initial screening to determine whether to accept or reject the Exception Request, and
- a substantive review to determine the Regional Entity’s recommendation to NERC as to whether or not the Exception Request should be approved.

The details of the procedures for the Regional Entity’s initial screening and substantive review of the Exception Request are set forth in sections 5.1, 5.2 and 5.3. Sections 5.1.3(a) and 5.2.2 set forth the time periods for completion of the initial screening and substantive review. However, section 5.0 also allows the Regional Entity the ability to establish an alternative time period objective and work plan:

If the Regional Entity determines at any time that for a specified period of time, the Regional Entity will be unable to complete initial screenings of Exception Requests within the time provided by section 5.1.3(a) and/or substantive reviews of Exception Requests within the time provided in section 5.2.2, the Regional Entity, based on consultation with NERC, shall establish an

alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests during the specified period of time. The alternative time period and work plan shall be publicized by posting on the Regional Entity's website.²⁵

Section 5.0 also sets forth exceptions to the procedures for the initial screening and substantive review of an Exception Request where the Regional Entity is the Submitting Entity:

- There will be no initial screening, and no Acceptance or Rejection, of the Exception Request.
- The Regional Entity will begin substantive review of the Exception Request (and of any responses received from the Owner and other applicable entities) within sixty days after submitting the Exception Request to the Owner and other applicable entities, and shall complete the substantive review within six months.
- Before the Regional Entity issues a Recommendation to NERC to approve or disapprove the Exception Request in whole or in part, the Technical Review Panel shall review the proposed Recommendation and issue an opinion on it, with copies provided to the Owner and to NERC.

Section 5.1, Initial Screening of Exception Request for Acceptance or Rejection, sets forth the detailed procedures relating to the Regional Entity's initial screening of an Exception Request. Section 5.1.3 specifies that the Regional Entity is to complete the initial screening within 60 days after receiving the Exception Request or, if the Submitting Entity is not the Owner, within 30 days after receiving the Owner's response, unless (i) the Regional Entity has established an alternative time period objective and work plan (as described above), or (ii) the Regional Entity issues a notice to the Submitting Entity (and to the Owner, if different), prior to the deadline date, stating a revised deadline date.

The initial screening shall review (i) whether the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity, and (ii) whether all Required Information has been provided; the Exception Request may be rejected for failure to meet either criterion.

²⁵ This provision is comparable to sections 5.1.3(b) of Appendix 4D, the TFE Procedure.

(Sections 5.1.4 and 5.1.5.) However, the Regional Entity may not reject the Exception Request because it is missing Required Information, unless (1) it first contacts the Submitting Entity to request that the missing Required Information be provided, and (2) the Submitting Entity fails to submit the missing Required Information within 30 days or such additional period of time that the Regional Entity allows based on the circumstances. If the Submitting Entity submits supplemental Required Information in response to the Regional Entity's request, the time for the Regional Entity to complete the initial screening is extended by 15 days from the receipt of the supplemental Required Information.

Section 5.1.6 specifies that the Regional Entity may either accept the Exception Request in its entirety, reject it in its entirety, or if the Exception Request is for more than one Element, may accept it with respect to a subset of the Elements and reject it with respect to the remainder of the Elements. Section 5.1.5(b) specifies that if the Regional Entity rejects the Exception Request, its notice must explain the reason for the Rejection. Section 5.1.6 also specifies that the Submitting Entity may, within 30 days after receipt of the Rejection, appeal to NERC to reverse the Rejection and to direct the Regional Entity to proceed with a substantive review of the Exception Request.

Section 5.2, Substantive Review of Exception Request for Approval or Disapproval, sets forth the detailed procedures for the Regional Entity's substantive review of the Exception Request. Section 5.2.1 specifies that in conducting its substantive review, the Regional Entity:

- may request access to and review the Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information;
- may conduct one or more physical inspections of the relevant Element(s) and its (their) context and surrounding Elements and Facilities;

- may request additional information from the Submitting Entity, Owner, or applicable PAs, RCs, BAs, TOPs and TPs; and
- may engage in further discussions concerning possible revisions to the Exception Request.

Section 5.2.2 specifies that at the outset of its substantive review of the Exception Request, the Regional Entity shall develop a milestone schedule pursuant to which it plans to conduct the substantive review, and shall send a copy of the milestone schedule to the Submitting Entity and the Owner (if different) for information. Section 5.2.2 further provides that the Regional Entity shall complete the substantive review and issue a notice with its Recommendation within six months following Acceptance of the Exception Request or within an alternative time period established pursuant to section 5.0. However, the Regional Entity may extend the period for substantive review by issuing a notice stating the revised date by which it will issue its Recommendation.

Section 5.2.3 specifies that upon completion of its substantive review of the Exception Request, the Regional Entity shall issue a Recommendation to NERC (with a copy to the Submitting Entity and to the Owner if different) as to whether the Exception Request should be approved or disapproved (in whole or in part), and stating the basis for the Recommendation. The Regional Entity shall also transmit to NERC the Exception Request Form and all other information considered by the Regional Entity in arriving at its Recommendation.

Section 5.2.4 provides that the Regional Entity shall not recommend Disapproval of an Exception Request, in whole or in part, without first submitting the Exception Request to a Technical Review Panel and receiving its opinion, in accordance with section 5.3 (summarized below).

Section 5.2.5 states that NERC shall develop, and post on its web site, a reporting program and schedule pursuant to which Regional Entities will be required to submit to NERC periodic reports on the numbers, status and timing of their initial screenings and substantive reviews of Exception Requests. While NERC considered establishing specific reporting requirements, including specific content, in Appendix 5C, it was determined that (i) it would be premature to do so prior to the approval of the BES Exception Procedure, and (ii) in any event, flexibility should be maintained to change the reporting requirements and content, once developed, by not hard-wiring these requirements in Appendix 5C.²⁶ These reports may also be posted on the Regional Entity and NERC websites, and would provide a basis for the development of periodic reports that NERC could submit to the Applicable Governmental Authorities. Submission and posting of periodic status reports will enable NERC to maintain oversight, and stakeholders to have visibility, of the Regional Entities' success or lack thereof in processing Exception Requests within the time periods specified in Appendix 5C.

Section 5.3, Technical Review Panel, contains the provisions relating to the Regional Entity Technical Review Panels. Each Regional Entity shall have a Technical Review Panel comprised of not less than three individuals appointed by the Regional Entity senior executive. Any panel members who are industry subject matter experts or Regional Entity members shall

²⁶ Candidate data items for the reporting requirements could include the number of new Exception Requests received during the quarter; the number of Exception Requests for which initial screening was completed during the quarter; the number of Exception Requests for which substantive review was completed during the quarter; the number of Exception Requests in the process of initial screening; the number of Exception Requests for which the original deadline date as specified in section 5.1.3 has not been reached; the number of Exception Requests for which the deadline date for the initial screening has been extended pursuant to section 5.1.3; the number of Exception Requests undergoing substantive review, the number of Exception Requests undergoing substantive review that are within the six month review period pursuant to section 5.2.2; and the number of Exception Requests undergoing substantive review for which the six month review period has been extended pursuant to section 5.2.2. However, no determination has been made as to the content requirements for the periodic reports.

comply with section 403.7 of the ROP (pertaining to confidentiality and to lack of conflicts of interest and financial interest in the matter), shall not have participated in the Regional Entity's review of the Exception Request that they are to evaluate, and shall have the required technical background to evaluate Exception Requests. Section 5.3 requires that if the Regional Entity intends to issue a Recommendation of Disapproval, in whole or in part, it must first submit its proposed determination to the Technical Review Panel and receive the Panel's opinion. If the Regional Entity decides to recommend Disapproval of the Exception Request, a copy of the Technical Review Panel's opinion is to be provided to the Submitting Entity (and to the Owner, if different). The Regional Entity is not bound by the Technical Review Panel's opinion, but the Panel's opinion will be part of the record associated with the Exception Request and shall be provided to NERC.

f. Section 6.0 – Supplementation of an Exception Request Prior to a Recommendation

Section 6.0 specifies that a Submitting Entity or Owner, at any time prior to the Regional Entity issuing its Recommendation, may supplement the Exception Request, either at the Regional Entity's request or at the Submitting Entity's or Owner's own initiative, for the purpose of providing additional or revised Required Information. The Submitting Entity or Owner shall submit a written explanation of what Required Information is being added or revised and the purpose of the supplementation. Section 6.0 provides that supplementing a pending Exception Request may, in the Regional Entity's discretion, reset the time period for the Regional Entity's initial screening or substantive review.

g. Section 7.0 – Appeal of Rejection of an Exception Request

Section 7.0 sets forth procedures by which a Submitting Entity may appeal to NERC the Regional Entity's Rejection of an Exception Request. The submission to NERC must

demonstrate that the Submitting Entity is eligible (in accordance with section 4.1) to submit the Exception Request and that all Required Information has been provided. If NERC determines that the Submitting Entity is eligible to submit the Exception Request, that all Required Information has been provided, and that the Exception Request should proceed to substantive review, NERC shall issue a decision directing the Regional Entity to proceed to a substantive review of the Exception Request. NERC's decision to direct, or not to direct, the Regional Entity to proceed to substantive review, is to be issued within 45 days after receiving the Submitting Entity's submission, with copies to the Submitting Entity (and Owner if different).

h. Section 8.0 – Approval or Disapproval of an Exception Request

Section 8.0 sets forth the process by which NERC will review an Exception Request, following receipt of the Regional Entity's Recommendation. The Submitting Entity or Owner will have 30 days following the date of the Regional Entity's recommendation to NERC to submit a comment in support of or opposition to the Recommendation. The Exception Request will be reviewed by a team of at least three persons, appointed by the NERC President, with the required technical background to evaluate Exception Requests. The members of the review team must have no financial, contractual, employment or other interest in the Submitting Entity or Owner that would present a conflict of interest and must be free of any conflicts of interest in accordance with NERC policies.²⁷ NERC may ask the Regional Entity and the Submitting

²⁷ At the present time, NERC anticipates that its review teams would be drawn from staff resources, supplemented by contractors as necessary, particularly where needed to provide specific relevant subject matter expertise. However, situations may also arise in which NERC may need to call on industry subject matter experts to participate as members of review teams.

Entity and Owner (if different) to appear at a NERC office, or to participate in a teleconference or webinar, to discuss questions concerning the Exception Request.²⁸

The NERC team's review shall be completed within 90 days after NERC receives the Regional Entity's Recommendation, at the conclusion of which the team will issue a written proposed decision to approve or disapprove the Exception Request. If the Exception Request concerns more than one Element, the review team's proposed decision may approve a portion and disapprove a portion of the Exception Request. The written proposed decision shall state the basis for the decision. If the review team's proposed decision is not unanimous, the dissenting team member may, if he or she wishes to do so, issue a minority report stating the dissenting member's reasons for disagreement with the proposed decision.

Within 30 days after the date of the NERC review team's proposed decision, the NERC President will issue a final written decision on the Exception Request on behalf of NERC. The NERC President's decision may adopt the review panel's proposed decision or modify the proposed decision, and may reach a different conclusion than the proposed decision as to whether the Exception Request is approved or disapproved. The decision issued by the NERC President shall be the decision of NERC with respect to the Approval or Disapproval of the Exception Request.

²⁸ In addition to the Regional Entity's Recommendation, the materials available to the NERC review team (and to the NERC President, see below) will include the Exception Request itself (including the Detailed Information to Support an Exception Request), any opinion from the Regional Entity Technical Review Panel, and any information submitted at the Regional Entity level by a PA, RC, BA, TOP or TP concerning the Exception Request. Although it is presumed that a PA, RC, BA, TOP or TP will present a comprehensive statement of its comments and concerns, if any, at the Regional Entity review stage, NERC would have the ability to ask the PA, RC, BA, TOP or TP if it needs to supplement the information, comments or concerns that were submitted to the Regional Entity, in order to provide the NERC review team and the NERC President with the most complete information on which to base their respective decisions.

Section 8.0 also specifies that NERC shall provide to the Submitting Entity and to the Owner, if different, copies of any documents considered by the NERC review team in reaching its proposed decision, and any additional documents considered by the NERC President in reaching the final decision, that were not originally provided by, or have not previously been provided to, the Submitting Entity or Owner. Finally, Section 8.0 provides that NERC shall retain the documentation used to substantiate the decision related to an Exception Request for the longer of seven years or as long as the Exception is in effect, unless a different retention period is otherwise identified.

i. Section 9.0 – Appeal of Approval or Disapproval of an Exception Request

Section 9.0 specifies that a Submitting Entity or Owner aggrieved by NERC’s Approval or Disapproval of an Exception Request or termination of an Exception (pursuant to section 11.0, described below) may, within 30 days following the date of the NERC decision, challenge the determination pursuant to ROP section 1703 (described in §III.D below). If neither the Submitting Entity nor the Owner challenges NERC’s decision within the 30 day period with respect to any Element to which the Exception Request or the Exception applies, the determination becomes effective with respect to that Element on the thirty-first day following the date of the NERC decision.

j. Section 10.0 – Implementation Period for Exceptions

Section 10.1, Inclusion Exceptions, specifies that for an Element for which an Inclusion Exception is approved, the Owner must submit to the Regional Entity a proposed implementation plan detailing the schedule for the Owner to achieve compliance with any Reliability Standards that are applicable to the newly included Element. The Owner and the Regional Entity shall confer to agree upon the implementation schedule. If they are unable to agree on a schedule, the

Regional Entity shall notify the NERC director of compliance operations of the disagreement and provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

Section 10.2 pertains to establishing the compliance implementation plan for an Element for which an Exclusion Exception has been denied.

- Subsection (a) specifies that in the case of a newly-constructed or installed Element which is included in the BES by application of the BES Definition but for which an Exception Request for an Exclusion Exception was submitted at least 12 months before commercial operation of the Element, but either is still pending or has been rejected or disapproved at the time of commercial operation, the Owner shall submit an implementation plan to the Regional Entity detailing the schedule for the Owner to achieve compliance with any Reliability Standards applicable to the newly constructed or installed Element.
- Subsection (b) specifies that in the case of an Element that was not included in the BES under the previously effective BES Definition but is included in the BES based on application of the revised BES Definition, and for which an Exception Request for an Exclusion Exception was submitted within 12 months after the revised BES Definition became effective but either is still pending or has been rejected or disapproved at the end of the applicable BES Definition implementation plan time period,²⁹ the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for the Owner to achieve compliance with any Reliability Standards applicable to the newly included Element.

²⁹ The proposed implementation period for the revised BES Definition is addressed in §III.E of NERC's contemporaneously-filed petition for approval of the revised BES Definition.

Under both subsections, the Owner and the Regional Entity shall confer to agree upon the implementation schedule. If they are unable to agree on a schedule, the Regional Entity shall notify the NERC director of compliance operations of the disagreement and provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

k. Section 11.0 – Termination of an Approved Exception

Section 11.1 specifies that an Exception Request typically will be approved without a specified date of termination but will be subject to review to verify continuing justification for the Exception. Section 11.2 requires that a Submitting Entity must notify the Regional Entity and NERC within 90 days after learning of any change of condition which would affect the basis stated by NERC in its decision approving the Exception Request. NERC will review the notification and determine whether to direct the Regional Entity to perform a substantive review pursuant to section 5.2 to verify continuing justification for the Exception and to issue a Recommendation to NERC on whether the Exception should be continued or terminated.

Section 11.3 requires a Submitting Entity that has received an Exception to certify periodically to the Regional Entity that the basis for the Exception remains valid, and in connection with each certification, shall provide any changes to the Section I Required Information or Section II Required Information. (Section 11.6 requires that upon request by the Regional Entity, the Submitting Entity or Owner (if different) shall, within 30 days, provide the most recent versions of any Section III Required Information requested.) The certification is to consider the effect on the basis for the Exception of changes such as load growth and topological changes and the effects on system limits and impacts as a result of contingencies listed in Table 1 of each applicable TPL Reliability Standard. The certifications must be provided every 36

months for as long as the Exception remains in effect. The first certification is due on the first day of the first quarter 36 months after the date on which the Exception Request was approved. If the certification is not provided, the Exception is subject to termination 90 days after the date the certification was due.

Additionally, section 11.4 specifies that if the Regional Entity obtains information through means other than those described in sections 11.2 (notification from the Submitting Entity) or 11.3 (periodic certifications submitted by the Submitting Entity) indicating an Exception may no longer be warranted, the Regional Entity shall provide the information to NERC. NERC will determine whether to direct the Regional Entity to perform a substantive review pursuant to section 5.2 to verify continuing justification for the Exception and to issue a Recommendation to NERC on whether the Exception should be continued or terminated. This process will also provide NERC the ability to direct the Regional Entity to conduct a substantive review of the Exception, if NERC obtains information indicating the Exception may no longer be warranted.

Section 11.5 specifies that if the Regional Entity recommends that an Exception be terminated, NERC shall take the following actions:

- issue a written notice to the Submitting Entity (and the Owner, if different) that the exception is under review for possible termination;
- allow the Submitting Entity and/or Owner 30 days to submit comments or information to NERC to show that the Exception continues to be justified and should remain in effect; and
- cause the Regional Entity's Recommendation to be reviewed by a NERC review panel for purposes of issuing a proposed decision, followed by a final decision by the NEC President, in accordance with section 8.0.

If the conclusion of the NERC review is that the Exception should be terminated, NERC shall send a written notice to the Submitting Entity and/or Owner stating that the Exception is

terminated and the reasons for the termination. When an Element will be included in the BES as a result of the termination of an Exclusion Exception, an implementation plan detailing the schedule for complying with any Reliability Standards applicable to the newly-included Element will be developed in accordance with section 10.1 as if it were being included by an Inclusion Exception.

D. Proposed Section 1703 of the Rules of Procedure

Proposed ROP section 1703 (included in **Attachments 2A** and **2B**) provides a procedure for a Submitting Entity or Owner to challenge the NERC decision to approve or disapprove an Exception Request pursuant to Appendix 5C. The Submitting Entity (or Owner, if different) must file the challenge within 30 days of the date of the NERC decision, by submitting it to the NERC director of compliance operations, with copies to the Regional Entity and to the Submitting Entity or Owner (if different). The Regional Entity, and the Submitting Entity or Owner if different, may file a response within 30 days after the date the challenge is filed with NERC. The challenge will be decided by the NERC BOTCC. The BOTCC must issue its decision within 90 days after the submission of the challenge, unless the BOTCC issues a notice extending the deadline for its decision to a stated date later than the 90-day deadline, and stating the reason for the extension. The BOTCC decision will be the final NERC decision on the Exception Request.

Section 1703.4 states that the Submitting Entity, or Owner if different, may appeal the final NERC decision to, or seek review of the final NERC decision by, the Applicable Governmental Authority(ies), in accordance with the legal authority and rules and procedures of the Applicable Governmental Authority(ies). An appeal to an Applicable Governmental Authority must be filed within 30 days following the date of the BOTCC's decision or within

such other time period as is provided for in the legal authority, rules or procedures of the Applicable Governmental Authority.

E. Proposed Revisions to Appendix 2 to the Rules of Procedure

In the December 20, 2011 ROP Revisions Filing, NERC submitted (among other revisions to the ROP) proposed new Appendix 2, *Definitions Used in the Rules of Procedure*. Appendix 2 is intended to collect, in one appendix to the ROP, all defined terms used anywhere in the ROP and appendices.

Proposed Appendix 5C includes a number of new defined terms that are not included in proposed Appendix 2 as filed in the December 20, 2011 ROP Revisions Filing (including, of course, the revised definition of Bulk Electric System). In addition, it is necessary to slightly modify several other definitions in proposed Appendix 2, which are already used elsewhere in the ROP, to make them consistent with definitions in proposed Appendix 5C. Accordingly, NERC is submitting, as part of this filing, proposed revisions to Appendix 2 as originally filed in the December 20, 2011 ROP Revisions Filing. **Attachment 3A** is a clean version of Appendix 2 incorporating the additional and revised definitions that are being added due to Appendix 5C, and **Attachment 3B** is a redlined version of Appendix 5C, as originally submitted in the December 20, 2011 ROP Revisions Filing, showing the additional and revised definitions that are being added due to Appendix 5C.

Following is a list of the new and revised definitions in Appendix 2:

Acceptance of the Exception Request or Acceptance (new defined term from Appendix 5C)

Approval of the Exception Request or Approval (new defined term from Appendix 5C)

Balancing Authority (minor revision to reflect inclusion of new defined terms in the BES through adoption of the revised BES Definition)

Balancing Authority Area (minor revision to reflect inclusion of new defined terms in the BES through adoption of the revised BES Definition)

BES Definition (new defined term from Appendix 5C)

Blackstart Resource (minor revision to reflect inclusion of new defined terms in the BES through adoption of the revised BES Definition)

Bulk Electric System or BES (revised definition from NERC Glossary)

Canadian Entity (revised definition to distinguish the meanings of this term as used in Appendix 4D and Appendix 5C, respectively)

Disapproval of the Exception Request or Disapproval (new defined term from Appendix 5C)

Distribution Factor (defined term from the NERC Glossary being added to the defined terms in the ROP as a result of adoption of the revised BES Definition)

Exception (new defined term from Appendix 5C)

Exception Procedure (new defined term from Appendix 5C)

Exception Request (new defined term from Appendix 5C)

Exception Request Form (new defined term from Appendix 5C)

Flowgate (defined term from the NERC Glossary being added to the defined terms in the ROP due to its use in the revised BES Definition)

Inclusion Exception (new defined term from Appendix 5C)

Interchange Distribution Calculator (defined term from the NERC Glossary being added to the defined terms in the ROP as a result of adoption of the revised BES Definition)

Lead Entity (new defined term from Appendix 5C)

Load (defined term from the NERC Glossary being added to the defined terms in the ROP due to its use in the revised BES Definition)

Mexican Entity (new defined term from Appendix 5C)

Owner (new defined term from Appendix 5C)

Reactive Power (defined term from the NERC Glossary being added to the defined terms in the ROP due to its use in the revised BES Definition)

Real Power (defined term from the NERC Glossary being added to the defined terms in the ROP due to its use in the revised BES Definition)

Recommendation (new defined term from Appendix 5C)

Rejection of the Exception Request or Rejection (new defined term from Appendix 5C)

Required Information (revised definition to distinguish the meanings of this term as used in Appendix 4D and Appendix 5D, respectively)

Scope of Responsibility (new defined term from Appendix 5C)

Section I Required Information (new defined term from Appendix 5C)

Section II Required Information (new defined term from Appendix 5C)

Section III Required Information (new defined term from Appendix 5C)

Sink Balancing Authority (minor revision to reflect inclusion of new defined terms in the BES through adoption of the revised BES Definition)

Special Protection System (minor revision to reflect inclusion of new defined terms in the BES through adoption of the revised BES Definition)

Submitting Entity (revised definition to distinguish the meanings of this term as used in Appendix 5C and in section 1500 of the ROP, respectively)

Technical Review Panel (new defined term from Appendix 5C)

F. Proposed Revisions to Appendix 5B to the Rules of Procedure

Appendix 5B of the ROP, *Statement of Compliance Registry Criteria*, includes within its text the current definition of Bulk Electric System. Accordingly, Appendix 5B needs to be revised to include the revised BES Definition. In addition, several other terms in Appendix 5B will now be capitalized because they become defined terms due to adoption of the revised BES Definition.

Attachment 6A to this filing is a clean version of Appendix 5B, as filed in the December 20, 2011 ROP Revisions Filing, with the existing definition of Bulk Electric System replaced by the revised BES Definition. **Attachment 6B** is a redlined version of Appendix 5B, as filed in the

December 20, 2011 ROP Revisions Filing, showing, in legislative style, the deletion of the current definition of Bulk Electric System and the insertion of the revised BES Definition, as well as the other capitalization revisions described above.³⁰

G. Proposed Revisions to Other Sections of the Rules of Procedure and to Appendices 3D, 4B, 6 and 8

NERC also provides notice of minor revisions to sections 302.2.2, 501.1.4.4, 804, 1102.2 and 1701 of the ROP and Appendices 3D, 4B, 6 and 8. The revisions to section 1701 are necessary to reflect the addition of new section 1703 to section 1700 of the ROP. The revisions to the other sections of the ROP and to Appendices 3D, 4B, 6 and 8 are all necessary to capitalize (consistent with the capitalization convention adopted in the November 29, 2011 ROP Revisions Filing) terms that become defined terms as the result of adoption of the revised BES Definition and several defined terms from the NERC Glossary that are used within the revised BES Definition. The revisions to these ROP sections and Appendices are shown in the redlined versions in **Attachments 2B, 4B, 5B, 7B and 8B**, respectively.

IV. NERC APPROVALS FOR THE PROPOSED REVISION

Following the issuance of FERC Order No. 743 on November 28, 2010, a SDT was formed charged with the responsibility to develop a revised BES Definition, technical criteria for Exception Requests, and an implementation plan (Standards Project 2010-17); and the BES ROP Team was formed to develop a proposed BES Exception Procedure to be added to the NERC ROP. The BES ROP Team members were selected, from stakeholder names that were submitted

³⁰ In **Attachments 6A and 6B**, the proposed revisions to Appendix 5B in the December 20, 2011 ROP Revisions Filing are incorporated in the existing text.

for participation on the Standards Project 2010-17 SDT, to provide a good mixture of technical, policy and industry view. The Team included Canadian representatives.³¹

During the course of the BES ROP Team's work, interested stakeholders were provided multiple opportunities to participate in the development of a BES Exception Procedure, through open meetings of the Team as well as through extensive use of e-mail, web postings, and informational and question-and-answer sessions held jointly with the BES Definition SDT. An extensive stakeholder e-mail list (the same list used for the BES Definition SDT's work) was compiled and used to distribute status information about the Team's work as well as draft documents. The use of a common e-mail list kept the BES Definition SDT and the BES ROP Team aware of each other's work. As an additional source of information for stakeholders, a BES ROP Team web page was created and hyperlinked to the "Standards Under Development" page on the NERC web site. Further, the NERC Member Representatives Committee was briefed on the BES ROP Team's progress on several occasions during 2011; two joint (with the SDT) NERC webinars with questions and answers were presented; and there was one joint presentation at a NERC Standards workshop.

Through two separate postings and comment periods, stakeholders were provided the opportunity to provide feedback on draft amendments to the ROP for the BES Exception Procedure. A 30-day posting for comment was held from May 10, 2011 through June 10, 2011, in conjunction with the first posting of the draft revised BES Definition. Seventy sets of comments were received on this draft posting, including comments from more than 176 different people from approximately 131 organizations representing all ten Registered Ballot Body

³¹ The BES ROP Team roster is available at:
http://www.nerc.com/docs/standards/dt/BESROP_ROSTER_08312011.pdf.

Segments. A special electronic comment form was utilized to facilitate the submission and review of stakeholder comments.

After considering the comments received in the first posting, the BES ROP Team made substantial revisions to the proposed ROP amendments. A second posting for a 45-day comment period was conducted from September 13, 2011 through October 27, 2011, in conjunction with the second posting and initial ballot of the revised BES Definition. There were 72 sets of comments received on the second posting, including comments from more than 134 different people from approximately 86 organizations representing nine of the ten Segments. An electronic comment form was again used which included specific questions that stakeholders were asked to respond to, as well as providing the ability to comment generally on the proposed text.³²

After reviewing the second set of comments, the BES ROP Team made additional revisions to the draft ROP provisions, and submitted the Team's proposed versions of Appendix 5C and ROP sections 509 and 1703 to NERC.

A more detailed discussion of the development process followed by the BES ROP Team and how the Team considered and addressed a number of issues it identified, including issues raised in stakeholder comments, in arriving at its final proposed ROP provisions, is provided in **Attachment 9**, which was prepared by the BES ROP Team.

The provisions proposed by the BES ROP Team were reviewed and discussed by NERC Reliability Standards, Compliance Operations, Reliability Assessment and Performance Analysis, and Legal staffs to identify any revisions to the Team's documents that NERC staff

³² The NERC Bylaws (Article XI, section 2) only require that one, 45-day comment period be provided for proposed additions or revisions to the ROP, before the additions or revisions are submitted to the Board for approval. By providing for two postings and stakeholder comment periods, the BES ROP Team exceeded the requirements of the Bylaws.

should recommend to the Board. Although generally accepting the structure and process embodied in the ROP provisions proposed by the BES ROP Team, NERC staff did make a number of specific revisions to the Team's proposed documents for the versions that were submitted to the NERC Board for approval. A number of these revisions were non-substantive revisions for purposes of internal consistency within Appendix 5C and/or for consistency (including format consistency) with other ROP provisions. Substantive revisions that were made to proposed Appendix 5C include the following items:

- Sections 5.0 item (iii), 5.1.5 and 5.3 – The Team's proposal included a requirement for a review by the Regional Entity Technical Review Panel if the Regional Entity proposes to reject an Exception Request. This provision has been deleted. In deleting this provision, NERC staff considered both this specific provision and the overall amount of process and resource requirements that Appendix 5C and ROP section 1703 would require of the Regional Entities and NERC, as well as the time potentially required to complete the overall Exception Request process, and concluded that the amount of process steps, resources and time required needed to be reduced. NERC Staff also noted that sections 5.1.5(b) and 7.0 give the Submitting Entity the right to appeal a Rejection of an Exception Request by the Regional Entity to NERC, thereby providing an opportunity for review of the Rejection decision.
- Section 5.1.3. The time periods for the Regional Entity to complete initial screening of Exception Requests, described in the Team's proposal as "typical," were changed to deadlines, with a provision added whereby the Regional Entity can extend the deadline to a new date by issuing a notice.³³
- Section 5.0 item (ii) and 5.2.2. The Team's version included a requirement for the Regional Entity to confer with the Submitting Entity (and Owner, if different) to establish milestones for the Regional Entity to complete its substantive review of the Exception Request within six months. This requirement for such consultations has been deleted. The necessity to engage in such conferences and negotiations in connection with every substantive review of an Exception Request was viewed as an excessive time and resource requirement for the Regional Entities. However, in its place, a provision was added in section 5.2.2 requiring the Regional Entity, at the

³³ In addition, section 5.0 allows a Regional Entity to establish an alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests, for a period of time, if the Regional Entity determines it will be unable to complete these activities within the time periods specified in section 5.0.

outset of its substantive review, to develop a milestone schedule pursuant to which it plans to conduct the substantive review, and to send a copy of the milestone schedule to the Submitting Entity and the Owner (if different) for information.

- A new section 5.2.5 was added stating that NERC shall develop, and post on its web site, a reporting program and schedule pursuant to which Regional Entities will be required to submit to NERC periodic reports on the numbers, status and timing of their initial screenings and substantive reviews of Exception Requests.
- Section 8.0. The Team’s proposed version included a requirement that if the decision of the three-person NERC team reviewing an Exception Request is not unanimous, its decision must note that fact and state the basis on which the minority disagreed. This provision has been eliminated and replaced with a provision that the dissenting team member may, if he or she wishes, submit a minority report stating the dissenting member’s reasons for disagreement with the decision. NERC staff did not see a need to require a statement of the minority position if the dissenting member did not feel sufficiently strongly to provide one.
- Section 8.0. The minimum time period for NERC to retain documentation of the NERC decision was increased from six years (in the Team’s proposal) to seven years, to be more consistent with other NERC document retention policies.
- Section 8.0. A provision in the Team’s version that “The Submitting Entity and/or Owner if different shall be given access to this record upon request, subject to applicable confidentiality provisions” was deleted. Entities should be responsible to maintain their own copies of the record of the Exception Request process; further, responding to requests for documents from the record (including ensuring that confidentiality requirements are maintained when access or copies are provided) would be an unnecessary resource requirement for NERC. However, this provision was replaced with a requirement that NERC shall provide to the Submitting Entity and to the Owner (if different), copies of any documents considered by the NERC review team in reaching its proposed decision, and any additional documents considered by the NERC President in reaching the final decision, that were not originally provided by, or have not previously been provided to, the Submitting Entity or Owner. (The references to the review team’s “proposed decision” and to the NERC President’s “final decision” were added as the result of the additional changes made to Section 8.0 at the direction of the NERC Board, as discussed below.)
- Sections 10.1, 10.2(a) and 10.2(b). In the Team’s version, the three cited sections each provided that if the Regional Entity and the Owner are unable to agree on an implementation plan for compliance with Reliability Standards applicable to an Element that is included in the BES due to Approval or Disapproval of an Exception Request, “the Regional Entity Board or a Board-appointed committee shall specify a reasonable implementation schedule.” NERC staff concluded that designating Regional Entity boards to make these determinations was inappropriate for a number of reasons, including lack of expertise and the fact that some Regional Entity boards

meet infrequently so that the determination of the implementation plan schedule could be unduly delayed. These provisions were deleted and replaced with provisions specifying that if the Regional Entity and the Owner are unable to agree on an implementation plan, the matter shall be brought to NERC and NERC will determine an appropriate implementation schedule.

- Section 11.3. The frequency with which the Submitting Entity must certify that the basis for the Exception remains valid was changed from 24 months (in the Team’s version) to 36 months. NERC staff noted that (i) the underlying system conditions and configurations on which the Exception was based are not likely to change frequently, (ii) Regional Entity resources will be required to track the certification due dates and process and review the certifications, and (iii) section 11.2 imposes a separate requirement on Submitting Entities to notify the Regional Entity and NERC within 90 days after learning of any change in condition which would affect the basis stated in the NERC decision approving the Exception Request.

Substantive revisions that NERC staff made to the BES ROP Team’s proposed ROP section 1703 (providing the procedures for a challenge of the NERC decision on an Exception Request to the NERC Board) are the following items:

- The Team’s proposed version of ROP section 1703 provided for two levels of review: review by a separate standing technical panel appointed by the NERC Board, followed by review (if requested by the appellant) by the NERC BOTCC. NERC Staff concluded that providing for two levels of review at the appeal stage, including review by another panel of technical experts, was unnecessary in light of the review steps in the process leading up to the “initial” NERC decision on the Exception Request, which already will have included review by two separate panels of technical experts. Therefore, section 1703 was revised to eliminate review by the standing panel of experts, and instead to provide for only one step in the challenge process, *i.e.*, consideration of the challenge by the BOTCC.
- The Team’s version also provided that the BOTCC, when asked to review the decision of the standing panel, could simply allow the 90-day period for BOTCC review to expire with no action, thereby making the standing panel’s decision the final NERC decision. However, because the review by the standing panel was eliminated, section 1703 was also revised to specify that the BOTCC must render a decision on each challenge. A provision was also added to allow the BOTCC to extend its decision deadline date beyond 90 days by issuing a notice to the parties stating the extended deadline date. This “extension” provision gives the BOTCC flexibility in scheduling and to ensure it has sufficient time to consider the challenge.

During the course of consideration of the BES ROP Team’s proposed Exception Procedure, there was also consideration of whether provisions should be added to Appendix 5C

to provide for coordination among Regional Entities concerning Exception Requests. Section 4.1 of proposed Appendix 5C specifies that:

With respect to an Element that crosses a boundary between Regional Entities, (1) the Submitting Entity will submit the Exception Request to both (or all) Regional Entities, which will cooperate to process the Exception Request pursuant to section 5.1 below, or (2) the Regional Entities must jointly submit an Exception Request to NERC (neither Regional Entity shall be allowed to submit such Exception Request unilaterally).

However, consideration was also given to whether to include procedures by which neighboring Regional Entities in an Interconnection to the Region in which the Element is located would be sent notification of, and could submit comments on, an Exception Request concerning how the Exception Request could impact reliability in the neighboring Region, even where the Element(s) that are the subject of the Exception Request are located solely within a single Region. It was the near-unanimous conclusion of the Regional Entities and NERC that such additional procedures were not needed and would, in fact, create additional prescriptive administrative requirements that could burden efficient implementation of the Exception Procedure. Rather, the Regional Entities can work cooperatively together to keep each other apprised of Exception Requests that could, if granted, have impacts on the Reliable Operation of the interconnected bulk-power transmission system in a neighboring Region within the Interconnection, and seek input from the neighboring Regional Entity where appropriate. Additionally, NERC, in its role under the Exception Procedure as the entity deciding whether Exception Requests should be approved or disapproved, can consider and evaluate the potential impacts of an Exception Request on the Reliable Operation of the interconnected bulk-power transmission system in neighboring Regional Entities.

The NERC Board accepted the revisions to the Exception Procedure recommended by NERC staff and directed that two additional revisions be made to the BES ROP Team's

proposed version of Appendix 5C. Both of the revisions directed by the Board have been implemented in section 8.0.

- The Board determined that the three-person NERC review team should not make the decision on behalf of NERC to approve or disapprove the Exception Request, but rather that the decision should be made by the NERC President. Accordingly, section 8.0 was revised to specify that the review team is to issue a proposed decision within 90 days after the Regional Entity's Recommendation is received, and that within 30 days thereafter, the NERC President will issue a final decision to approve or disapprove the Exception Request, which shall be the NERC decision.
- The Board directed that a provision be added to specify that the NERC review team members shall be free of any conflicts of interest with respect to the Submitting Entity or Owner. Based on this direction, the following sentence was added in section 8.0: "The members of the review team shall have no financial, contractual, employment or other interest in the Submitting Entity or Owner that would present a conflict of interest and shall be free of any conflicts of interest in accordance with NERC policies."

On January 18, 2012, the NERC Board approved proposed Appendix 5C, as modified by NERC staff and subject to revisions as directed by the Board (as described above), proposed ROP section 509, and proposed ROP section 1703 (also as modified by NERC staff). The Board also approved the proposed revisions to ROP sections 302.2.2, 501.1.4.4, 804, 1102.2 and 1701 and to Appendices 2, 3D, 4B, 5B, 6 and 8 that are submitted with this Petition.

V. NERC LIST OF FACILITIES THAT HAVE RECEIVED EXCEPTIONS

In Order No. 743, FERC indicated that NERC should maintain a list of facilities that are granted exemptions from the BES Definition pursuant to the exemption process that NERC was directed to develop:

While the Commission will not require that we review each exemption on a facility-by-facility basis, we would maintain the authority to conduct audits to determine the appropriateness of a particular exemption. We contemplate that a Commission staff audit would review the application of the exemption criteria developed by NERC in NERC's or a Regional Entity's determination to approve an exemption for a particular facility. However, to facilitate such audits, the ERO should maintain a list of exempted facilities that can be made available to the

Commission on request. NERC can decide how best to maintain the list, including determining whether or not to post it on the NERC website.³⁴

. . . [T]he exemption process provides a means of ensuring that relatively high voltage distribution facilities are excluded from compliance with mandatory Reliability Standards. In this light, we believe that it would be beneficial for the ERO in maintaining a list of exempted facilities, to consider including a means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition. Similarly, the ERO could track exemptions for radial facilities.³⁵

The proposed BES Exemption Procedure and the other new ROP provisions submitted in this Petition do not include provisions for NERC to maintain a list of facilities that have received Exceptions, as this is an internal administrative matter for NERC to implement that does not need to be embedded in the ROP. However, NERC recognizes FERC's statement that NERC should maintain such a list, and plans to do so. NERC will develop a specific internal plan and procedures for maintaining a list of facilities for which Exceptions have been granted, in order to be prepared to initiate the list when the BES Definition and the BES Exception Procedure go into effect and Exception Requests begin to be received and processed. NERC has not yet determined specifically how the list will be organized and structured, nor whether or under what conditions the list will be made available on the NERC web site or otherwise made available to any entities other than FERC and other Applicable Governmental Authorities and the Regional Entities. One overriding issue will be the extent of Confidential Information (including Critical Energy Infrastructure Information) that will be included in Exception Requests and in decisions on Exception Requests, and how to make the list of facilities with Exceptions available (if at all) to other stakeholders while continuing to protect Confidential Information.

³⁴ Order No. 743 at P 117.

³⁵ Order No. 743 at P 119.

In addition to the list that NERC will maintain, it will be necessary for Regional Entities to maintain lists of facilities within their Regions for which Exceptions have been granted, in order to monitor compliance with the requirement to submit periodic certifications pursuant to section 11.3 of Appendix 5C.

Respectfully submitted,

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Attachments 1 – 9

(Available on the NERC Website at
http://www.nerc.com/fileUploads/File/Filings/Attachments_BES_ROP.pdf)