

July 16, 2015

**VIA OVERNIGHT MAIL**

Sheri Young, Secretary of the Board  
National Energy Board  
517 – 10<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2R 0A8

RE: *North American Electric Reliability Corporation*

Dear Ms. Young:

The North American Electric Reliability Corporation (“NERC”) hereby submits Notice of Filing of the North American Electric Reliability Corporation of Rules of Procedure Revisions. NERC requests, to the extent necessary, a waiver of any applicable filing requirements with respect to this filing.

Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Holly A. Hawkins

Holly A. Hawkins  
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American Electric Reliability Corporation*

Enclosure

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- Attachments 3A and 3B: Clean and Redlined Versions of Revised Appendix 4C of the Rules of Procedure—*Compliance Monitoring and Enforcement Program*

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**Attachment 2A:** Clean Version of Revised Appendix 2 of the Rules of Procedure—*Definitions Used in the Rules of Procedure*

**Attachment 2B:** Redlined Version of Revised Appendix 2 of the Rules of Procedure—*Definitions Used in the Rules of Procedure*

**Attachment 3A:** Clean Version of Revised Appendix 4C of the Rules of Procedure—*Compliance Monitoring and Enforcement Program*

**Attachment 3B:** Redlined Version of Revised Appendix 4C of the Rules of Procedure—*Compliance Monitoring and Enforcement Program*

## **I. EXECUTIVE SUMMARY**

On November 3, 2014, NERC made an informational filing (“NERC Informational Filing”)<sup>3</sup> to FERC describing the various processes and programs developed and deployed through the ERO Enterprise’s<sup>4</sup> risk-based CMEP.<sup>5</sup> Through the initiative, the ERO Enterprise identified and implemented changes to certain processes to enhance the effectiveness of compliance monitoring and enforcement activities. As an organization, NERC has been transforming its approaches to compliance monitoring and enforcement to be forward-looking with a focus on high reliability risk areas. On February 19, 2015, FERC approved NERC’s implementation of the risk-based CMEP, and, among other things, directed NERC, to submit a compliance filing including revisions to the NERC Rules of Procedure.<sup>6</sup> NERC developed the attached proposed revisions to the Rules of Procedure to articulate the risk-based CMEP concepts and programs, as directed by FERC. The proposed changes reflect input from Regional Entities, various entities participating in the Risk-Based Compliance and Enforcement Advisory Group, as well as additional input from industry responses submitted after NERC posted the revisions for comment on April 6, 2015.

The proposed Rules of Procedure revisions recognize the risk-based CMEP processes and concepts. For example, NERC proposes to include the following definitions of key risk-based terms: Compliance Exceptions; Find, Fix, Track and Report (“FFT”); Inherent Risk Assessment (“IRA”); Internal Controls Evaluation (“ICE”); and Self-Logging. NERC also proposes revisions to the Rules of Procedure that: highlight the types of data NERC uses to identify annual

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<sup>3</sup> *Informational Filing of the North American Electric Reliability Corporation Regarding Implementation of the Reliability Assurance Initiative*, Docket No. RR15-2-000 (November 3, 2014).

<sup>4</sup> The term “ERO Enterprise” refers to NERC and the eight Regional Entities.

<sup>5</sup> NERC is submitting this Informational Filing this day with this provincial governmental authority.

<sup>6</sup> February 19 Order at PP 30-31.

risk elements; explain that the type and frequency of application of the compliance monitoring tools appropriate for a particular registered entity is based on that entity's specific risk to the reliability of the bulk power system ("BPS"), as evaluated through the IRA and, where applicable, the ICE; and include the principles related to the exercise of enforcement discretion.

NERC received and considered several comments recommending additional changes to the Rules of Procedure that were beyond the scope of the instant revision process or included a level of detail unnecessary to address the FERC directives. The proposed revisions to the Rules of Procedure strike a proper balance between memorializing the risk-based concepts and processes and maintaining flexibility that is inherent to such processes as contemplated by FERC. NERC has committed to considering these comments as it identifies the need for any additional changes to the Rules of Procedure based on its experience with implementation of the new processes. Any such additional changes will be submitted to the applicable governmental authority prior to implementation.<sup>7</sup>

The NERC Board of Trustees approved the proposed revisions to the NERC Rules of Procedure on June 22, 2015. NERC is filing the proposed revisions to the Rules of Procedure with the Applicable Governmental Authorities.

## **II. PROPOSED REVISIONS**

### **A. FERC February 19 Order**

In the February 19 Order, FERC approved the implementation of RAI into the risk-based CMEP and directed NERC to submit proposed revisions to the NERC Rules of Procedure that articulate its fundamental concepts and programs.<sup>8</sup> The February 19 Order explained that FERC did "not expect NERC to include in the Rules of Procedure detailed procedures that would

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<sup>7</sup> February 19 Order at P 30.

<sup>8</sup> February 19 Order at P 31.

unduly hamstringing the intended flexibility and streamlined processes that are the hallmark of RAI.”<sup>9</sup> Instead, FERC clarified that the NERC Rules of Procedure must “recognize the existence of the RAI processes, articulate basic RAI concepts and define fundamental RAI elements, and require Commission approval for significant changes in RAI as NERC further develops and implements its risk-based approach.”<sup>10</sup>

## **B. NERC Development of the Proposed Revisions**

The proposed revisions are designed to address FERC’s directive in its February 19 Order to include fundamental concepts and programs of the risk-based CMEP through the Rules of Procedure where relevant and applicable. Significantly, the revisions do not address issues outside of the scope of the original NERC filing in this proceeding. In determining the level of detail to include within its Rules of Procedure, NERC considered a variety of factors. As many of the risk-based CMEP programs rely on assessments of risk using a variety of factors, NERC agreed with FERC that it would be “inappropriate to add detailed procedures that would unduly hamstring the intended flexibility and streamlined processes” of the risk-based CMEP.<sup>11</sup> NERC has provided a variety of additional resources on its risk-based CMEP page<sup>12</sup> that contain further detail regarding the risk-based CMEP, including the Risk Elements Guide,<sup>13</sup> ERO Enterprise Inherent Risk Assessment Guide,<sup>14</sup> ERO Enterprise Internal Control Evaluation Guide,<sup>15</sup>

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<sup>9</sup> *Id.* at 30.

<sup>10</sup> *Id.*

<sup>11</sup> February 19 Order at P 30.

<sup>12</sup> NERC’s Reliability Assurance Initiative page, available at <http://www.nerc.com/pa/comp/Pages/Reliability-Assurance-Initiative.aspx>.

<sup>13</sup> Risk Elements Guide for Development of the 2015 CMEP IP, available at [http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Final\\_RiskElementsGuide\\_090814.pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Final_RiskElementsGuide_090814.pdf).

<sup>14</sup> ERO Enterprise Inherent Risk Assessment Guide, available at [http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO\\_Enterprise\\_Inherent\\_Risk\\_Assessment\\_Guide\\_20141010.pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO_Enterprise_Inherent_Risk_Assessment_Guide_20141010.pdf).

<sup>15</sup> ERO Enterprise Internal Control Evaluation Guide, available at <http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Enterprise%20Internal%20Control%20Evaluation%20Guide.pdf>.

NERC's Notice of Filing Regarding Implementation of Reliability Assurance Initiative,<sup>16</sup> and Self-Logging program document.<sup>17</sup>

NERC provided an initial draft of the proposed revisions to the Regional Entities and the Risk-Based Compliance and Enforcement Advisory Group. Based on the comments received, NERC developed additional revisions to the Rules of Procedure. NERC posted its Rules of Procedure revisions publicly on April 6, 2015 for a comment period ending on May 21, 2015. NERC received 15 sets of comments from industry stakeholders for consideration.<sup>18</sup>

In response to stakeholder comments, NERC made additional clarifications and improvements to the Rules of Procedure revisions. NERC posted a further revised draft of the Rules of Procedure changes incorporating comments received and accompanying materials on the NERC website on June 5, 2015, at least fifteen days prior to consideration of these revisions by the Board, as contemplated in NERC's process for proposed revisions to the Rules of Procedure. On June 22, 2015, the Board of Trustees approved the Rules of Procedure revisions.

### **C. Summary of Proposed Revisions to the Rules of Procedure**

NERC proposes revisions to the following sections of the NERC Rules of Procedure:

- Section 400: Compliance Enforcement
- Appendix 2: Definitions Used in the Rules of Procedure
- Appendix 4C: Compliance Monitoring and Enforcement Program

A discussion of these proposed revisions on a section-by-section basis follows below.

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<sup>16</sup> [This](#) filing was submitted on this day to this provincial governmental authority.

<sup>17</sup> ERO Enterprise Self-Logging Program, *available at* <http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/ERO%20Enterprise%20Self-Logging%20Program.pdf>.

<sup>18</sup> These materials are available at <http://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.

## 1. Section 400: Compliance Enforcement

In Section 401.6, NERC proposes to replace the reference to the “Actively Monitored Requirements” with “risk elements.” The purpose of this revision is to articulate the process by which NERC will identify continent-wide risks to the reliability of the BPS. The revisions outline the kinds of data NERC uses to identify the risk elements and explains that these risks represent the focus for monitoring activities in the next year as inputs into the Regional Entities’ individual registered entity oversight plans. NERC notes that the section is unchanged in its requirements that the ERO Enterprise retains its authority to monitor compliance with all applicable NERC Reliability Standards regardless of whether NERC identifies them as areas of focus or the Regional Entities include them in the oversight plans. NERC modified the language of this section and other sections within the NERC Rules of Procedure, discussed below, to indicate clearly what the contemplated risk is to the reliability of the BPS. The Risk Elements Guide<sup>19</sup> and the 2015 CMEP Implementation Plan<sup>20</sup> contain additional detail regarding the variety of factors NERC considers when identifying ERO-wide risks to reliability.

In Section 403.8, NERC proposes revisions to remain consistent with Section 401.6, referenced above. The revisions include the identification of risk elements and related NERC Reliability Standards and requirements, which the Regional Entities consider when developing the individual oversight plans for registered entities.

In Section 403.16, NERC proposes revisions that the Regional Entity Compliance Monitoring and Enforcement Implementation Plans include certain requirements. These

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<sup>19</sup> Risk Elements Guide for Development of the 2015 CMEP IP (September 8, 2014), *available at* [http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Final\\_RiskElementsGuide\\_090814.pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Final_RiskElementsGuide_090814.pdf).

<sup>20</sup> 2015 ERO Compliance Monitoring and Enforcement Implementation Plan (Revised May 5, 2015), *available at* [http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Final\\_2015%20CMEP%20IP\\_V\\_1.1%20\(Po sted\\_05052015\).pdf](http://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Final_2015%20CMEP%20IP_V_1.1%20(Po sted_05052015).pdf).

requirements include details on the regional risk assessment processes and results, Reliability Standards and requirements associated with regional risk assessment results, and the Regional Entity's Annual Audit Plan. These revisions help promote consistency and compliance with NERC's uniform Compliance Monitoring and Enforcement Program.

## **2. Appendix 2: Definitions Used in the Rules of Procedure**

In Appendix 2, NERC proposes the addition of five new definitions of fundamental elements related to the risk-based CMEP. In addition, NERC revised the definitions of "NERC Compliance Monitoring and Enforcement Program Implementation Plan" and "Regional Implementation Plan" to reflect the replacement of the actively monitored list with the identification of risk elements. The revisions define the following terms:

1. Compliance Exception
2. Find, Fix, Track and Report
3. Inherent Risk Assessment
4. Internal Control Evaluation
5. Self-Logging

NERC did not include in the Rules of Procedure detailed procedures that would unduly hamstring the intended flexibility and streamlined processes that are the hallmark of the risk-based CMEP. Rather, NERC defined the fundamental concepts of the program to ensure the ERO has "fair and impartial procedures for enforcement,"<sup>21</sup> and that FERC will be able to maintain meaningful oversight.<sup>22</sup> Additional information regarding the processes associated with such defined terms, for example Compliance Exceptions and FFT, is available in sections 3A.1 and 5.2A of Appendix 4C to the NERC Rules of Procedure, discussed below.

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<sup>21</sup> 16 U.S.C § 824o(c)(2)(C).

<sup>22</sup> February 19 Order at P 30.

### **3. Appendix 4C: Compliance Monitoring and Enforcement Program**

NERC proposes to remove duplicative definitions from Appendix 4C that also appear in Appendix 2, NERC has also proposed revisions to its compliance monitoring processes and annual implementation plan sections.

In Section 3.0 and Section 3.1.4 of Appendix 4C, NERC proposes revisions memorializing the requirement of an annual identification of risk elements and related NERC Reliability Standards and requirements in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan. This section is comparable and consistent with the revisions to Section 401.6, referenced above. In addition, these sections include that the Compliance Enforcement Authority (“CEA”) would determine the type and frequency of application of the compliance monitoring tools appropriate for a particular registered entity based on the registered entity’s specific risks to the reliability of the BPS. The revisions to Section 3.1.4 of Appendix 4C also describe the process of identifying risk elements for use in the development of annual Implementation Plans. Through the processes memorialized in these provisions, the ERO Enterprise will identify risks to the reliability of the BPS and tailor monitoring activities accordingly.

In Section 3.5A of Appendix 4C, NERC proposes revisions that recognize the existence of the self-logging program. These revisions include the requirement for qualification of registered entities based on a formal review of internal controls,<sup>23</sup> and the obligation by the CEA to make logs available to NERC and Applicable Governmental Authorities upon request. Also addressed are the content of logs, the rebuttable presumption that items logged will qualify for treatment as Compliance Exceptions and the limitation of the self-logging process to

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<sup>23</sup> February 19 Order at P 42.

noncompliance posing a minimal risk to the reliability of the BPS unless otherwise authorized by an Applicable Governmental Authority. On this day, NERC is submitting a filing which includes the ERO Enterprise Self-Logging Program.<sup>24</sup>

In Section 3.8 of Appendix 4C, NERC added a reference to the alternative enforcement processes that act as alternatives to the enforcement actions process outlined in Section 5.0. New Sections 3A.0, 3A.1, and 5.2A, discussed below, detail these alternative enforcement processes.

In new Section 3A.0 Enforcement Discretion, NERC proposes revisions recognizing the fundamental principles associated with the exercise of enforcement discretion associated with noncompliance that does not pose a serious or substantial risk to the reliability of the BPS. This section identifies Compliance Exceptions and FFTs as alternatives to the process outlined in Section 5.0.

New Section 3A.1 Compliance Exception Process indicates that Compliance Exceptions are limited to noncompliance posing a minimal risk to the reliability of the BPS unless an Applicable Governmental Authority authorizes expansion of the program. The section also outlines the circumstances under which the CEA would consider a Compliance Exception a part of a registered entity's compliance history.<sup>25</sup> It outlines the fundamental principles associated with Compliance Exception process for resolution of noncompliance outside of Section 5.0 of the CMEP, including mitigation, availability of information to NERC and Applicable Governmental Authorities, tracking and analysis of information associated with such noncompliance, and ability of a registered entity to opt-out of such alternative process. Finally,

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<sup>24</sup> *See Notice of Filing of the North American Electric Reliability Corporation Regarding Implementation of Reliability Assurance Initiative.*

<sup>25</sup> February 19 Order at P 46. Section 3.A.1 provides that a CEA must: (1) consider an entity's history of Compliance Exceptions where the failure to fully remediate the underlying compliance matter contributes to a subsequent serious and/or substantial noncompliance matter; and (2) assess subsequent noncompliance to determine whether an entity should continue to qualify for Compliance Exception treatment.

this section indicates that changes to such processes are subject to review and approval by Applicable Governmental Authorities.

In new Section 5.2A FFT Process, NERC has followed FERC's request to articulate basic RAI concepts and to define fundamental RAI elements.<sup>26</sup> In response to commenter suggestions on its posted Rules of Procedure revisions, NERC replaced the term "lesser risk" with "minimal or moderate risk" for clarity. The section also outlines the fundamental principles associated with the FFT process, including mitigation, availability of information to NERC and Applicable Governmental Authorities, tracking and analysis of information associated with such noncompliance, and ability of a registered entity to opt-out of such alternative process.

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<sup>26</sup> February Order 19 at P 30.

Respectfully submitted,

/s/ Sonia Mendonca

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Date: July 16, 2015

## **ATTACHMENTS 1 – 3**

(Available on the NERC Website at

[http://www.nerc.com/FilingsOrders/ca/Canadian%20Filings%20and%20Orders%20DL/Attach\\_Risk-Based\\_CMEP\\_ROP.pdf](http://www.nerc.com/FilingsOrders/ca/Canadian%20Filings%20and%20Orders%20DL/Attach_Risk-Based_CMEP_ROP.pdf))