

December 9, 2013

**VIA OVERNIGHT MAIL**

Sheri Young, Secretary of the Board  
National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta  
T2P 0X8

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 Revisions to Appendix 2 and Appendix 4D of the NERC Rules of Procedure.. 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/ Rebecca J. Michael  
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Associate General Counsel for  
Corporate and Regulatory Matters  
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Enclosure

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**BEFORE THE  
NATIONAL ENERGY BOARD**

**NORTH AMERICAN ELECTRIC )  
RELIABILITY CORPORATION )**

**NOTICE OF FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
OF REVISIONS TO APPENDIX 2 AND APPENDIX 4D  
OF THE NERC RULES OF PROCEDURE**

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**ATTACHMENTS**

**Attachment 1A:** NERC Rules of Procedure Appendix 4D, *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards* – Clean version

**Attachment 1B:** NERC Rules of Procedure Appendix 4D, *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards* – Redlined version

**Attachment 2A:** NERC Rules of Procedure Appendix 2, *Definitions Used in the Rules of Procedure* – Clean version

**Attachment 2B:** NERC Rules of Procedure Appendix 2, *Definitions Used in the Rules of Procedure* – Redlined version

## **I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) provides notice of revisions to the following two Appendices to NERC’s Rules of Procedure (“ROP”): Appendix 4D, *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Standards*, and Appendix 2, *Definitions Used in the Rules of Procedure*.<sup>1</sup>

The proposed revisions to Appendix 4D are the result of a collaborative process among NERC, the Regional Entities and industry stakeholders to review and revise the processes for submitting, reviewing and approving or disapproving Technical Feasibility Exceptions (“TFE”) to NERC Critical Infrastructure Protection Standards. Appendix 4D was developed during 2009. The revisions to Appendix 4D proposed in this filing are the result of the first comprehensive review of Appendix 4D since it was originally developed. The proposed revisions reflect the experience of the Regional Entities, NERC and industry stakeholders in preparing and processing TFE Requests since Appendix 4D initially became effective in January 2010. The proposed revisions will streamline the process for submitting, reviewing and approving or disapproving TFE Requests, and for modifying approved TFEs, and will allow for a more efficient use of resources by all participants, which will also promote greater reliability. The revisions to Appendix 2, which contains all the defined terms used in the ROP, reflect the deletion of two defined terms from Appendix 4D that are not used elsewhere in the ROP, the addition of two new defined terms, and a revision to an existing defined term. This filing includes the following attachments:

- **Attachment 1A:** NERC ROP Appendix 4D, *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards* – Clean version
- **Attachment 1B:** NERC ROP Appendix 4D, *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards* – Redlined version

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<sup>1</sup> Capitalized terms used herein are defined terms set forth in Appendix 4D and/or Appendix 2 of the ROP.

- **Attachment 2A:** NERC ROP Appendix 2, *Definitions Used in the Rules of Procedure* – Clean version
- **Attachment 2B:** NERC ROP Appendix 2, *Definitions Used in the Rules of Procedure* – Redlined version

## **II. NOTICES AND COMMUNICATIONS**

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

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## **III. PROPOSED REVISIONS TO APPENDIX 4D AND APPENDIX 2**

### **A. Basis and Purpose of the Proposed Revisions**

A collaborative effort to review and restructure Appendix 4D was initiated in January 2012. The objective of the review process was to evaluate and realign the benefits and burdens associated with the TFE processes. Over a period of several months during 2012, technical experts at each Regional Entity developed the initial concepts for streamlining the TFE process. As described in greater detail in §III.C below, considerable opportunity was thereafter provided for stakeholder review, comment and input to the proposed revisions. Stakeholder comments submitted on the posted version of proposed revised Appendix 4D were considered and numerous additional revisions were made, before a revised version of Appendix 4D was submitted to the NERC Board and approved by the Board on January 30, 2013.

The proposed revisions to Appendix 4D draw upon the experience gained to date by the Regional Entities' staffs who have been tasked with processing large numbers of TFE Requests

during the last three years. (Over the first several months after Appendix 4D went into effect, over 5,000 TFE Requests were submitted by Responsible Entities.<sup>2</sup>) When Appendix 4D was originally developed in 2009, Regional Entities as well as Responsible Entities had little or no experience as to the types of issues that would arise in connection with TFE Requests, including associated risks and vulnerabilities to the reliability of the Bulk Power System, the likely nature and types of the TFE Requests that would be submitted, and the nature and amount of information needed to evaluate and substantiate TFE Requests. The experience since January 2010 has shown that the majority of TFE Requests that have been submitted relate to minimal-risk issues, have common rationales and justifications, are supported by common evidence, and often involve similar devices across Responsible Entities nationwide (*i.e.*, it is infrequent that a TFE Request is unique or unfamiliar). Based on this experience, the administrative burden associated with the current process – which assumes that each TFE Request is highly individualized – is no longer justified when weighed against the incremental benefits to Bulk Power System reliability provided by the current process. The proposed revisions to Appendix 4D balance the need for adequate information to evaluate and approve or disapprove a TFE Request with the need to streamline the process for reviewing TFE Requests and eliminate the administrative burdens that the current process imposes on both Responsible Entities and Regional Entities. This streamlining will permit Regional Entities and Responsible Entities to focus more resources on activities which promote greater reliability and security for the Bulk Power System.

Although the processes for analyzing whether a TFE is appropriate are being simplified, there are no changes to the substantive criteria for analyzing and approving/disapproving TFE Requests. A principal feature of the proposed revisions to Appendix 4D is the elimination of the current two-phased (Part A and Part B) TFE Request and the corresponding two-step review

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<sup>2</sup> See *Annual Report of the North American Electric Reliability Corporation on Wide-Area Analysis of Technical Feasibility Exceptions*, Docket No. RR10-1-001 (filed with FERC on Sept. 28, 2011), at 8.

process. The current TFE Request process consists of a preliminary screening phase to determine if the TFE Request contains all Required Information and should be “accepted” or “rejected,” followed by a substantive review phase to determine if the TFE Request should be “approved” or “disapproved.” After three years of experience in reviewing and processing TFE Requests, the Regional Entities have accumulated a significant database of materials used to justify TFE Requests and the compensating measures and mitigating measures associated with a number of the devices for which TFE Requests are commonly requested. Because experience has shown that many TFE Requests and the related substantiation materials and information are similar in nature, Regional Entities are now able to consolidate the two phases in the current process into one simplified step for providing the information associated with a TFE Request.

Going forward, in the majority of cases, the Regional Entity is expected to be able to review and approve (or disapprove) a TFE Request in 60 days, based on the information provided by the Responsible Entity and the Regional Entity’s accumulated knowledge and information about the type of device that is the subject of the TFE Request. Revised Appendix 4D provides for a standard review and approval/disapproval period of 60 days, as contrasted with one year in current Appendix 4D.<sup>3</sup> Under revised Appendix 4D, the Regional Entity retains the ability to request additional information and/or to extend the review period beyond 60 days if, for example, a TFE Request involves a novel type of device. Any necessary verification of the information in the TFE Request and the mitigating measures and compensating measures employed by the Responsible Entity can be performed, at the Regional Entity’s discretion, through a Compliance Audit or Spot Check (including as part of a regularly-scheduled Compliance Audit or Spot Check).

In addition to shortening the overall processing time and reducing the formal process steps for TFE Requests, the proposed revisions also eliminate the periodic reporting

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<sup>3</sup> See §5.2.2 of current Appendix 4D.



requirements applicable to Responsible Entities with respect to their approved TFEs. Revised Appendix 4D provides for a new form of submittal, the Material Change Report, which is required to be submitted to the Regional Entity if, and only if, there is a Material Change to the facts underlying the approved TFE.

The proposed revisions to Appendix 4D address primarily the administrative steps for processing TFE Requests and amending approved TFEs. As stated above, no changes to the substantive criteria for approving TFE Requests are being proposed, although the processes for analyzing whether the substantive criteria are met are being modified. Additionally, the requirements of Appendix 4D relating to the development and implementation of compensating measures and mitigating measures by the Responsible Entity are not being revised. Revised Appendix 4D will continue to provide for a safe harbor period for the Registered Entity with respect to compliance with the Applicable Requirement(s) that are the subject of a pending TFE Request, while the TFE Request is being processed and, if it is disapproved, for a short period thereafter. Finally, under revised Appendix 4D, sufficient information concerning TFEs will continue to be available to NERC and other Applicable Governmental Entities through an Annual Report prepared and filed by NERC.

NERC had submitted the proposed revisions to Appendix 2 and Appendix 4D to the Federal Energy Regulatory Commission (“FERC”) on April 8, 2013. In an order issued on September 3, 2013, FERC approved such amendments, but also directed NERC to make limited revisions to two sections of Appendix 4D. Specifically, FERC directed NERC (1) to revise section 6.5 of Appendix 4D to specify a time frame for reporting Material Changes to TFEs upon their identification and discovery; and (2) to revise Section 13.1 of Appendix 4D to identify additional information to be addressed in the annual report to FERC.<sup>4</sup> This filing contains both

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<sup>4</sup> *Order Approving Revisions to Electric Reliability Organization’s Rules of Procedure and Directing Compliance Filing*, 144 FERC ¶ 61,180 (2013) (“September 3 Order”).

the amendments to the Rules of Procedure submitted to FERC on April 8, 2013 and the revisions directed by FERC in its September 3 Order.<sup>5</sup>

**B. Detailed Discussion of the Proposed Revisions**

**1. Proposed Revisions to Appendix 4D**

**a. Section 1.0, Introduction**

No revisions are proposed to §1.0, Introduction, of Appendix 4D.

**b. Section 2.0, Definitions**

The following revisions are proposed to §2.0, Definitions, of Appendix 4D.

**Section 2.11, Effective Date.** References to “rejecting” and “rejection” of a TFE Request are deleted from this defined term because under revised Appendix 4D, the acceptance/rejection processing step for TFE Requests is eliminated. (Similar deletions are made in other sections throughout Appendix 4D.) Prior “rejections” of TFE Requests under the existing procedures are not disturbed by this change.

**Section 2.17, Material Change.** A new defined term, “Material Change,” is added with the following definition:

**Material Change:** A change in facts that modifies Required Information in connection with an approved TFE. Examples of a Material Change could include, but are not limited to an increase in device count (but not a decrease), change in compensating measures, change in statement of basis for approval for the TFE, a change in the Expiration Date of the TFE, or a Responsible Entity achieving Strict Compliance with the Applicable Requirement.

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<sup>5</sup> With respect to the amendments to the two provisions directed by FERC in the September 3 Order, NERC posted a set of proposed amendments to the TFE Procedure on its website for stakeholder comment for a 45-day comment period (September 16, 2013 – October 31, 2013). Nineteen sets of written comments were submitted by the industry stakeholders during the comment period, including several comments regarding sections of Appendix 4D that go beyond the scope of this compliance filing. (The comments on the posting are available at: <http://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.) The instant amendments reflect NERC’s revisions in response to the comments on Sections 6.5 and 13.1, which were the subject of the September 3 Order directives. With respect to the issues raised that were beyond the scope of the FERC directives of the two provisions, NERC evaluated the comments but did not make any other revisions to Appendix 4D. Once additional implementation experience has been gained, NERC will revisit these issues in the future, as needed. These amendments to the TFE Procedures were approved by the NERC Board of Trustees on November 7, 2013.

**Section 2.18, Material Change Report.** A new defined term, “Material Change Report,” is added with the following definition:

**Material Change Report:** A report submitted by the Responsible Entity to the Regional Entity in the event there is a Material Change to the facts underlying an approved TFE pursuant to Section 4.0.

As discussed in greater detail below concerning revised §4.0 of Appendix 4D, the Material Change Report will be the single document to be used by Responsible Entities for reporting to the Regional Entity changes in information relating to an approved TFE.

**Section 2.19, Part A Required Information.** This defined term is deleted because under the revised TFE Request process, there will no longer be separate “Part A Required Information” and “Part B Required Information” to be submitted.

**Section 2.20, Part B Required Information.** This defined term is deleted because under the revised TFE Request process, there will no longer be separate “Part A Required Information” and “Part B Required Information” to be submitted.

Due to the addition of the defined terms Material Change and Material Change Report as §2.17 and §2.18 and the deletion of the defined terms Part A Required Information and Part B Required Information, currently §2.19 and §2.20, the subsection numbering of the defined terms NRC and NRC Safeguards Information is changed from §2.17 and §2.18, respectively, to §2.19 and §2.20.

c. **Section 3.0, Basis for Approval of a Technical Feasibility Exception**

There are no changes proposed to §§3.1, 3.2 or 3.3. In §3.4, the provision that a TFE must typically be requested for and will be approved only for a limited duration, until a stated Expiration Date, and that the Responsible Entity will be expected to achieve Strict Compliance with the Applicable Requirement by the Expiration Date, is deleted; and a requirement to submit a Material Change Report in the event of a Material Change to the facts underlying an approved TFE is added. With the proposed revisions, §3.4 states:

A TFE Request may be approved without a specified Expiration Date, however, in the event of a Material Change to the facts underlying an approved TFE, the Responsible Entity shall submit a Material Change Report providing continuing justification for the TFE or verifying Strict Compliance with the Applicable Requirement has been achieved.

The revisions to §3.4 reflect the new process for modifying an approved TFE through the submission of a Material Change Report.

**d. Section 4.0, Form, Contents and Submission of a TFE Request or Material Change Report**

The title of §4.0 (including several of its subsections) is revised to reflect that this section will now contain requirements pertaining to the form, contents and submission of a Material Change Request as well as of a TFE Request.

**Section 4.1, Submissions for a TFE Request or Material Change Report by Class.** In §4.1, the requirement that a separate TFE Request must be submitted for each Applicable Requirement for which the Responsible Entity seeks a TFE is eliminated. The section is revised to provide that a Responsible Entity may seek a TFE for class-based categories of devices. Also eliminated is the provision that a TFE Request may not be submitted for Covered Assets located within the geographic boundaries of different Regional Entities (*i.e.*, the requirement to submit separate TFE Requests for the same Covered Assets and Applicable Requirements to each Regional Entity in which the Responsible Entity has the Covered Assets in question, is eliminated).

**Section 4.2, Form and Format of TFE Request or Material Change Request;** and **§4.3, Deleted.** These sections are significantly revised and combined into a single section (§4.2) to eliminate the requirement to submit Part A Required Information and Part B Required Information in the TFE Request. The detailed list of Part A Required Information is eliminated. The revised §4.2 lists the following revised set of Required Information that is to be submitted with either a TFE Request or a Material Change Report:

- (i) Category (pursuant to Section 4.1 or “other”)

- (ii) Device ID (assigned by the Responsible Entity)
- (iii) Physical location of device
- (iv) Actual or estimated date in which device is placed into production
- (v) Proposed TFE Expiration Date (if any)
- (vi) Actual TFE Expiration Date (if any)
- (vii) CIP Standard
- (viii) Applicable Requirement
- (ix) Whether the TFE is also filed with other Regional Entities (if yes, which ones)
- (x) Basis for approval (pursuant to Section 3.0)
- (xi) Compensating and mitigating measures
- (xii) Date of completion of compensating and mitigating measures (if in progress, estimated completion date and time schedule)
- (xiii) Whether the TFE is related to a Self-Certification or Self-Report
- (xiv) Whether the TFE has been previously approved
- (xv) TFE I.D., if known.

Revised §4.2 further specifies that additional information may be requested by the Regional Entity as necessary or appropriate; and that at the discretion of the Regional Entity, information may be verified at a subsequent Compliance Audit, Spot Check, or other compliance monitoring activity.

Under revised §4.2, the review of a TFE Request will no longer consist of separate reviews of the Required Part A Information for acceptance or rejection of the TFE Request, followed by (if the TFE Request is accepted) substantive review of the Required Part B Information for approval or disapproval. Instead, there will be a single review for approval or disapproval based on the consolidated information required to be submitted in the TFE Request.

Revised §4.2 states that the removal of a device from a TFE containing multiple devices of the same class does not require the filing of a Material Change Report; instead, the

information can be communicated during the next required submittal associated with the same class.

Section 4.2 is also revised to specify that the requirement that a TFE Request must include a statement signed by the Responsible Entity's Senior Manager or Delegate is applicable to Material Change Reports as well.

Finally, revised §4.2 describes the filings to be made by Responsible Entities after revised Appendix 4D becomes effective:

At the time of the first (a) initial TFE Request or (b) Material Change Report that is required to be submitted after approval of this Appendix 4D, a Responsible Entity will submit a complete submittal in the form contemplated in this section to reflect previously approved and pending TFEs as well as any new information being submitted. This one-time submittal will be followed by the maintenance of the TFE information associated with such Responsible Entity, either through additional TFE Requests or Material Change Reports pertaining to TFE Requests already approved. The submittal of this baseline TFE submittal will not reopen any TFEs already approved under the old process or restart the review process of pending TFEs.

All of the above-described information and requirements are contained in revised §4.2. Section 4.3, currently titled "Required Information to be Included in the TFE Request," is shown as "[Deleted]" to avoid the need to renumber subsequent subsections within §4.0.

**Section 4.4, Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information.** In §4.4.1, the reference to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information "included in the Part B Required Information" is changed to "included in the TFE Request" to reflect the elimination of "Required Part B Information" from Appendix 4D.

**Section 4.5, [currently] Submission of TFE Request in Advance of Compliant Date.** This section is deleted in its entirety and is shown as "[Deleted]." The first sentence of the current text specifies that a Responsible Entity should submit a TFE Request at least sixty (60) calendar days prior to the Responsible Entity's Compliant Date for the Applicable Requirement

that is the subject of the TFE Request, to avoid the risk that the initial screening will not be completed by the Compliant Date and the Responsible Entity will become subject to issuance of a Notice of Alleged Violation for noncompliance with the Applicable Requirement. This text is deleted because the “initial screening” step is eliminated in revised Appendix 4D; and because safe harbor protection from issuance of a Notice of Alleged Violation while the TFE Request is being reviewed is provided for in §5.3. The second sentence of the current text of §4.5 provided safe harbor protection for TFE Requests filed by January 31, 2010 pertaining to an Applicable Requirement for which the Responsible Entity’s Compliant Date was on or before December 31, 2009, and is no longer needed due to the passage of time.

e. **Section 5.0, Review and Approval/Disapproval of TFE Requests or Material Change Reports**

**Section 5.1, Identification of TFE Requests or Material Change Reports.** Section 5.1, which is currently titled “Initial Screening of TFE Request for Acceptance or Rejection,” is substantially revised to eliminate provisions relating to initial screening and acceptance or rejection of the TFE Request, as this process step is being eliminated. As revised, §5.1 provides only for the assignment of a unique identifier to each TFE Request or Material Change Report that is received by the Regional Entity.

**Section 5.2, Review of TFE Request or Material Change Report for Approval or Disapproval.** Section 5.2, which is currently titled “Substantive Review of TFE Request for Approval or Disapproval,” is revised throughout so as to describe the one-step review of the TFE Request under the streamlined process. References to “rejection” of the TFE Request are deleted. In addition, references are added throughout this section to “Material Change Report” since the same review process will apply to both TFE Requests and Material Change Reports.

In subsection 5.2.1, text is deleted that currently specifies that the Regional Entity will conduct the substantive review of the TFE Request in accordance with established compliance monitoring processes under the Compliance Monitoring and Enforcement Program (“CMEP”),

such as a Compliance Audit or Spot Check. This provision is no longer needed in this subsection because revised §4.2 specifies that the Regional Entity may verify information provided by the Responsible Entity at a subsequent Compliance Audit, Spot Check or other monitoring activity.

In subsection 5.2.2, the time period for the Regional Entity to review a TFE Request (or Material Change Report) and issue its notice of approval or disapproval is reduced from one year to 60 days. The Regional Entity retains the ability to extend the review period for individual TFE Requests or Material Change Reports by issuing a notice to the Responsible Entity, with a copy to NERC, stating a revised date for issuance of the notice of approval or disapproval. The provision for establishment of an alternative time period objective by the Regional Entity for its review of TFE Requests is deleted. This provision was included in the initial version of Appendix 4D due to the lack of knowledge as to the volume of TFE Requests that would be submitted to each Regional Entity and the amounts of time and resources that would be required to process them.

Section 5.2.3 is revised from specifying that the Regional Entity must either approve the TFE Request in its entirety or disapprove it in its entirety, to providing that the Regional Entity may approve or disapprove a TFE Request or a Material Change Report in whole or in part, even if the TFE Request or the Material Change Report is for two or more Covered Assets subject to the same Applicable Requirement or covers class-based categories of devices.

Sections 5.2.5 and 5.2.6 are revised to eliminate provisions currently specifying that if a Responsible Entity submits an amended TFE Request incorporating, to the Regional Entity's satisfaction, revisions to the TFE Request identified in the Regional Entity's notice of disapproval, the Regional Entity shall approve the amended TFE Request. The entire TFE Request submittal and review process is sufficiently simplified and shortened in revised Appendix 4D that the Responsible Entity can simply submit a new TFE Request addressing the



deficiencies identified in the notice of disapproval of the Responsible Entity's original TFE Request.

**Section 5.3, No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request or Material Change Report is Being Reviewed.** This section is revised (1) to reflect the revised, one-step review process for TFE Requests (*i.e.*, references to the TFE Request being accepted or rejected and to the period of initial review for acceptance or rejection are deleted), and (2) to add references throughout to "Material Change Report." The safe harbor provisions of revised §5.3 will be applicable to the time period during which a Material Change Report is being reviewed, as well as to the time period during which a TFE Request is being reviewed.

**f. Section 6.0, Implementation and Reporting by the Responsible Entity Pursuant to an Approved TFE or Material Change Report**

Section 6.1 is unchanged, and it continues to specify that the Responsible Entity will be required to implement compensating measures and/or mitigating measures as described, and in accordance with the time schedule(s) set forth, in an approved TFE.

Section 6.2 is revised to specify that, if a TFE has been approved with an Expiration Date, the Responsible Entity will be required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirements and eliminating the TFE, as described, and in accordance with the time schedule set forth, in the approved TFE. Currently, §6.2 applies this requirement with respect to TFEs that are approved without an Expiration Date. However, based on the accumulated experience of the Regional Entities and NERC during the last three years in receiving, reviewing and approving TFE Request, most TFEs are approved without Expiration Dates, because there is no solution that will allow Strict Compliance to be achieved. This is because most TFE Requests are for network devices and other equipment for which the vendors are not pursuing development of versions that would allow Strict Compliance with Applicable Requirement of CIP Standards. Therefore, it is not

possible to specify an Expiration Date for these TFEs, and the TFEs need to be approved with no Expiration Date. NERC and the Regional Entities expect this to continue to be the case for most new TFE Requests going forward. In these circumstances, requiring the Responsible Entity to perform research and analysis to determine how to achieve Strict Compliance is an unnecessary and unproductive exercise.

Sections 6.3, 6.4, 6.5 (in its current text), 6.6 and 6.7 are deleted. These sections currently require the Responsible Entity to submit (1) quarterly reports to the Regional Entity on the Responsible Entity's progress in implementing the compensating measures and/or mitigating measures specified in the approved TFE, and (2) if the TFE has no Expiration Date or an Expiration Date more than one year after the TFE Request was submitted, an annual report to the Regional Entity supporting the continuing need and justification for the TFE. In revised Appendix 4D, §§6.3, 6.4, 6.6 and 6.7 are shown as "[Deleted]". In the April 8<sup>th</sup> submission to FERC, NERC proposed the following new text in §6.5:

If there is a Material Change in the facts underlying approval of the TFE, the Responsible Entity shall submit a Material Change Report to the Regional Entity supporting the continuing need and justification for the approved TFE or verifying that the Responsible Entity has achieved Strict Compliance with the Applicable Requirement pursuant to Section 4.0.

In the April 8<sup>th</sup> submission, NERC explained that the experience of the past three years has shown that the periodic reports from Responsible Entities are not necessary or useful to maintaining reliability so long as the TFE remains unchanged; therefore, the requirements to prepare, submit and review the periodic reports created an administrative burden for Responsible Entities and Regional Entities without corresponding benefit.<sup>6</sup> Instead, as NERC explained in the April 8<sup>th</sup> submission, the new text of §6.5 requires the Responsible Entity, in the event of a Material Change in the facts underlying approval of the TFE, to submit a report to the Regional

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<sup>6</sup> As noted above, most TFEs have involved network devices and other equipment for which the vendors are not pursuing development of versions that would allow Strict Compliance with Applicable Requirement of CIP Standards, and therefore the TFEs have been approved without Expiration Dates.

Entity supporting the continuing need and justification for the approved TFE or verifying that the Responsible Entity has achieved Strict Compliance with the Applicable Requirement. Additionally, pursuant to §13.5 of revised Appendix 4D, Responsible Entities remain obligated to provide any information deemed necessary by NERC to fulfill its reporting obligations to FERC.

In the September 3 Order, FERC directed NERC to specify a deadline for a responsible entity to submit a Material Change Report to the Regional Entity after a Material Change is identified or discovered<sup>7</sup> to promote consistency across Regional Entities and to ensure that Material Change Reports are timely submitted.<sup>8</sup>

NERC received several comments on its posted proposal to require submittal of the Material Change Report within thirty days of identification or discovery of the Material Change with an opportunity for additional time upon request for good cause shown. Commenters supported time periods ranging from thirty days to ninety-two days, as well as quarterly and annual submittals. Commenters also requested clarification that the time period refers to calendar days.

In response to FERC's September 3 Order and comments from stakeholders, NERC's instant filing proposes to amend Section 6.5 to require that a Material Change Report be filed within sixty (60) calendar days of identification or discovery of a Material Change; however, this time period may be extended upon request and with good cause shown. The instant proposed amendment states as follows:

If there is a Material Change in the facts underlying approval of the TFE, the Responsible Entity shall submit a Material Change Report to the Regional Entity, within sixty (60) calendar days of identification or discovery of the Material Change, supporting the continuing need and justification for the approved TFE or verifying that the Responsible Entity has achieved Strict Compliance with the Applicable Requirement pursuant to Section 4.0. The Regional Entity may

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<sup>7</sup> *Id.* at P 14.

<sup>8</sup> *Id.*

extend the period for submittal of the Material Change Report upon request and with good cause shown.

NERC believes the proposed amendment provides the appropriate amount of certainty for submittal of the report while still providing responsible entities with the flexibility needed to seek additional time as warranted.

Section 6.8 is unchanged, and continues to specify that the Responsible Entity is required to file a Self-Report, and will be subject to issuance of a Notice of Alleged Violation for noncompliance with the Applicable Requirement that is the subject of the approved TFE, if the Responsible Entity fails to implement or maintain a compensating measure or mitigating measure or fails to submit a report by the required date.

Section 6.9 is deleted. This section currently requires the Responsible Entity to submit a report to the Regional Entity, at least 30 days prior to the Expiration Date of the TFE, demonstrating that the Responsible Entity has achieved, or will be able to achieve by the Expiration Date, Strict Compliance with the Applicable Requirement. This section is no longer necessary (1) because experience has shown that most TFEs are issued with no Expiration Date, and (2) because the need for the reports provided for in §6.9 is superseded by the introduction of the Material Change Report, which would be filed (among other grounds) if the Responsible Entity has achieved Strict Compliance with the Applicable Requirement and therefore the TFE is no longer needed.

**g. Section 7.0, Amendment of a Pending TFE Request**

**Section 7.1, Amendment of a Pending TFE Request.** This section is revised to specify that a Responsible Entity may amend a submitted TFE Request that is under review “during the 60-day review period” rather than “at any time.” References to how an amendment should address Part A and Part B of the TFE Request are deleted since the provisions regarding Part A Required Information and Part B Required Information are being eliminated from revised

Appendix 4D. Additionally, §7.1 is amended to specify that submission of an amendment may result in the Regional Entity extending the review period, but does not require restart of the approval process. By the end of the 60-day review period (unless extended), the Regional Entity will approve or disapprove the TFE Request based on the information it has received. The amendments to §7.1 are intended to encourage complete initial TFE Requests and to discourage unnecessary amendments to the TFE Request that could delay processing and review.

Additionally, because §7.2 is deleted (see next paragraph), the numbering of subsection 7.1 is also deleted and this section becomes simply §7.0 with no subsections.

**Section 7.2, Amendment of an Approved TFE.** This section is deleted. In revised Appendix 4D, there is no longer a need for separate provisions on requesting amendments to an approved TFE, since the Material Change Report will be used for this purpose.

**h. Section 8.0, Compliance Audit Requirements Relating to Approved TFE**

Section 8.1 is revised to delete the reference to subsequent Compliance Audits of the Responsible Entity “conducted prior to the Expiration Date.” As noted earlier, experience has demonstrated that most TFEs are such that they are issued without Expiration Dates. Additionally, §8.1 is revised to provide that subsequent Compliance Audits of the Responsible Entity “may include” (rather than “shall include”) audit of the Responsible Entity’s implementation and maintenance of the compensating measures and/or mitigating measures specified in the approved TFE and its other steps towards achieving Strict Compliance with the Applicable Requirement(s). The revision gives the Regional Entity flexibility in determining the need to expend resources on these audit steps in subsequent Compliance Audits of the Responsible Entity. The experience of the previous three years has shown that many TFE Requests involve matter of low risk to the reliability of the Bulk Power System and for which the rationales, evidence, documentation, and compensating measures and mitigating measures are both highly similar and familiar to the Regional Entities and the Responsible Entities. In many

such cases, verification can be accomplished through review of documentation, and verification through a Compliance Audit process is not necessary nor an efficient use of resources.

There are no revisions to §8.2, which specifies that, for TFEs with an Expiration Date, the first Compliance Audit of the Responsible Entity following the Expiration Date shall include audit of the Responsible Entity's Strict Compliance with the Applicable Requirement that was the subject of the TFE.

**i. Section 9.0, Termination of an Approved TFE**

Section 9.1 is revised to clarify the circumstances under which an approved TFE will be terminated. As revised, §9.1 states as follows:

An approved TFE shall remain in effect unless it terminates on its Expiration Date, it is terminated at an earlier date pursuant to this Section 9.0, the Responsible Entity achieves Strict Compliance with the Applicable Requirement or there is a material misrepresentation by the Responsible Entity as to the facts relied upon by the Regional Entity in approving the TFE.

There are no revisions to §§9.2, 9.3 and 9.4, which set forth process steps for terminating an approved TFE by the Responsible Entity or by the Regional Entity or NERC.

**j. Section 10.0, Hearings and Appeals Process for Responsible Entity**

Text is deleted from §10.0 that was duplicative of the process for contesting Possible Violations under the CMEP. Based on stakeholder comments, a sentence was retained specifying that "The Responsible Entity may raise issues relating to the disapproval of its TFE Request or the termination of the approved TFE in the hearing concerning the Notice of Alleged Violation, proposed Penalty or sanction, or Mitigation Plan components." References to "rejection" of the TFE Request were deleted, as acceptance/rejection of the TFE Request is no longer a process step in revised Appendix 4D.

**k. Section 11.0, Consistency in Approval and Disapproval of TFE Requests and Material Change Reports**

The purpose of §11.0 is to identify activities that NERC and the Regional Entities will engage in for the purpose of assuring consistency in the review, approval and disapproval of TFE

Requests (i) among the Regional Entities, (ii) among different types of Covered Assets that are subject to the same Applicable Requirement, (iii) with respect to application of the criteria for approval of TFE Requests, and (iv) with respect to the types of mitigating measures and compensating measures that are determined to be appropriate to support approval of TFE Requests. Section 11.0 has been revised throughout to add references to Material Change Reports, as the activities described in §11.0 will be conducted for the purpose of assuring consistency in the review and approval or disapproval of Material Change Reports as well as TFE Requests.

Section 11.2.1, which currently specifies that NERC will review reports from the Regional Entities of approved and disapproved TFE Requests and will issue to the Regional Entities such guidance as NERC deems appropriate to achieve consistency in the approval and disapproval of TFE Requests, is deleted. NERC has not found the review of these reports, which is time-consuming and labor-intensive, to be particularly useful in promoting consistency, particularly in light of the fairly high degree of similarity to date among TFE Requests and the types of Covered Assets that are the subject of TFE Requests (as noted earlier in this filing). Based on experience, the other activities described in §11.0 have been more effective in promoting consistency. Additionally, a reference to TFE Requests “rejected” has been deleted since the rejection/acceptance of TFE Requests will no longer be a process step in revised Appendix 4D.

**I. Section 12.0, Confidentiality of TFE Requests, Material Change Reports and Related Information**

Section 12.0 is revised to delete references to acceptance/rejection of TFE Requests and to Required Part A Information and Required Part B Information; and to add references throughout the section to Material Change Reports. The confidentiality provisions of §12.0 will apply to Material Change Reports and documents associated with Material Change Reports, as well as to TFE Requests and associated documents.

**m. Annual Report to FERC and Other Applicable Governmental Authorities**

**Section 13.1, Contents of Annual Report.** In its April 8<sup>th</sup> submission to FERC, NERC explained that this section provides for NERC to submit an Annual Report to FERC providing Wide-Area analyses regarding the use of TFEs and the impact on the reliability of the Bulk Electric System. References to including in the Annual Report the numbers of TFE Requests accepted and rejected are deleted, as acceptance/rejection of TFE Requests will no longer be a process step in revised Appendix 4D. A reference to §5.1.5 is deleted as that subsection is being eliminated.

In the September 3 Order, FERC directed NERC to revise Section 13.1 to require the annual TFE report to FERC to include data and information regarding Material Change Reports, including the number of Material Change Reports filed annually and information regarding the types of circumstances or events that led to Material Changes, as well as any additional information NERC believes would be useful. FERC also directed NERC to require the annual TFE report to FERC to include additional information regarding TFEs and their expiration dates, including the number of TFEs by expiration year and CIP Standard requirement, the percentage of currently approved TFEs without expiration dates, and the number of new TFEs approved without expiration dates annually.<sup>9</sup>

NERC received several comments regarding its posted proposal to amend Section 13.1 to track the language of FERC's directives regarding additional information to be included in the annual TFE report. Commenters proposed striking or narrowly tailoring language that NERC provide other information that would be useful and deleting the reference to "annually" in new Section 13.1(x). In response to FERC's September 3 Order and upon consideration of the stakeholders' comments, NERC has modified Section 13.1 to require the annual TFE report to

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<sup>9</sup> *Id.* at PP 17-18.



include data and information regarding Material Change Reports and TFE expiration dates as follows:

(vii) Assessments, by Regional Entity (and for more discrete areas within a Regional Entity, if appropriate) and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, of the Wide-Area impacts on the reliability of the Bulk Electric System of approved TFEs in the aggregate, including the compensating measures and mitigating measures that have been implemented; ~~and~~

(viii) Discussion of efforts to eliminate future reliance on TFEs;-

(ix) Data and information regarding Material Change Reports, including the number of Material Change Reports filed annually and information regarding the types of circumstances or events that led to Material Changes, as well as any additional information NERC believes would be useful; and

(x) Additional information about TFEs and their expiration dates, including the number of TFEs by expiration year and CIP Standard requirement, the percentage of currently approved TFEs without expiration dates, and the number of new TFEs approved without expiration dates annually.

NERC considered the comments received on the proposed amendments and found that the instant proposed amendments to Section 13.1 appropriately track the directives in FERC's Order and are consistent with NERC's authority under Section 215 of the Federal Power Act, the NERC Rules of Procedure and FERC's rules and regulations. NERC's proposed amendments also provide the flexibility to include any additional information in the annual report that NERC believes would be useful, in accordance with the September 3 Order.<sup>10</sup> NERC did not remove the term "annually" in Section 13.1(x) because it provides clarity on how information will be reported.

**Section 13.2, Submission of Quarterly Reports by Regional Entities to NERC.** This section, which currently requires the Regional Entities to submit quarterly reports to NERC containing certain information, is being deleted. Although the information in the quarterly

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<sup>10</sup> *Id.* at P 17 (where FERC directed NERC to "revise the TFE Procedure to require the annual report to the Commission to include data and information regarding Material Change Reports, including the number of Material Change Reports filed annually and information regarding the types of circumstances or events that led to Material Changes, as well as any additional information NERC believes would be useful." (Emphasis added).

reports was useful in the preparation of NERC's Annual Reports to FERC (provided for in §13.1), NERC and the Regional Entities concluded that it would be more efficient for NERC simply to ask the Regional Entities for, and the Regional Entities to provide, the specific data and information NERC needs to prepare its annual report at the time(s) NERC needs the data and information.

**Sections 13.3, 13.4 and 13.5.** No revisions are proposed to these sections.

## **2. Proposed Revisions to Appendix 2**

The following revisions are proposed to *Appendix 2, Definitions Used in the Rules of Procedure*, which contains all defined terms used in the ROP. These revisions match the proposed revisions to §2.0, Definitions, of Appendix 4D which have been approved by the NERC Board of Trustees. No revisions to Appendix 2 are proposed other than the addition and deletion of defined terms in revised Appendix 4D.

- In the definition of Effective Date, references to “rejecting” and “rejection” of a TFE Request are deleted.
- The new defined term Material Change is added.
- The new defined Material Change Report is added.
- The defined term Part A Required Information is deleted.
- The defined term Part B Required Information is deleted.

## **C. Process for Development and Approval of the Proposed Revisions**

As noted in §III.A, the initiative to review and revise the administrative processes for evaluating TFE Requests was initiated in January 2012 by the Regional Entities. Over a period of several months in early 2012, technical experts on the Regional Entity staffs developed the initial concepts for streamlining the processes for submitting and reviewing TFE Requests. Regional Entities presented the proposals for streamlining the TFE review processes to industry stakeholders at a number of trade association conferences and other meetings. These presentations and meetings provided opportunities for stakeholders to provide feedback and

suggestions and to express concerns, which the teams working on the revisions were able to take into consideration.

The proposed revisions to Appendix 4D are the first set of ROP revisions processed using the ROP process improvements for developing, obtaining stakeholder input on, and obtaining Board approval for ROP revisions that were approved by the NERC Board in August 2012. Following the initial development work and stakeholder interaction on revising Appendix 4D described above, Regional Entity representatives worked with NERC staff to develop an initial set of proposed changes to Appendix 4D, which were discussed with industry representatives at a meeting in October 2012, prior to revisions being posted for stakeholder comment in accordance with the NERC Bylaws.

The proposed revisions to Appendix 4D were posted on the NERC website on October 5, 2012, for stakeholder comment for a 45-day comment period running through November 19, 2012<sup>11</sup>. The posting included a memorandum explaining the background of the proposed revisions and a summary of the revisions being proposed to each section of Appendix 4D, along with a redlined version of Appendix 4D showing the proposed revisions. On October 31, 2012, NERC held a webinar to discuss the proposed revisions and answer stakeholder questions. At the request of a number of industry stakeholders, the comment deadline was extended from November 19 to November 27, 2012. Additionally, the proposed revisions were placed on the agenda for, and discussed at, the November 6, 2012 meeting of the NERC Member Representatives Committee.

A total of 29 sets of comments were received on the posting of the proposed revisions, including comments from trade associations and other industry groups.<sup>12</sup> The majority of the

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<sup>11</sup> Posting proposed revisions to the ROP on the NERC website for stakeholder comment for a minimum of 45 days is required by Article XI, section 2 of the NERC Bylaws.

<sup>12</sup> Some of the comments received from individual companies stated that the company joined in the comments submitted by an applicable trade association or industry group, and did not provide any separate comments. The comments are posted here: <http://www.nerc.com/page.php?cid=1|8|169>.

commenters strongly supported the initiative to streamline the processing of TFE Requests. Most of the specific comments were focused on seeking clarifications of the proposed new procedures, including in particular the process for reporting a Material Change. Commenters also requested clarifications concerning the transition from the existing procedures under current Appendix 4D to the proposed revised procedures; these comments were addressed through additional revisions to Appendix 4D from the posted version. To assist stakeholders in understanding the new processes, a sample TFE Request form was also made available through the NERC website.

With respect to the comments seeking clarifications regarding the new Material Change Report provided for in revised Appendix 4D, Material Change Reports will be used to communicate information regarding and, to the extent necessary, request approval for changes to an approved TFE. The Material Change Report process will mirror the streamlined process for submitting new initial TFE Requests under Appendix 4D, and the Material Change Reports will be reviewed in within the same time frame as a new TFE Request (*i.e.*, 60 days).

To clarify the transition from the current procedures to the revised procedures, the proposed revisions to Appendix 4D were further modified to specify that at the time of the first initial TFE Request or the first Material Change Report that is required to be submitted after revised Appendix 4D becomes effective, a Registered Entity will be expected to submit a complete TFE request submittal to reflect existing TFEs as well as the new TFE Request or the Material Change.<sup>13</sup> The submittal of this baseline document will not reopen any TFEs that have already been approved pursuant to the original Appendix 4D, or restart the review process for then-pending TFE Requests. This one-time submittal will be followed by maintenance of the submitted document by the Responsible Entity, through submission of either additional TFE Requests or Material Change Reports pertaining to previously-approved TFEs.

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<sup>13</sup> See the last paragraph of revised §4.2 of Appendix 4D.

The proposed revisions to Appendix 4D were scheduled for consideration by the Board in a meeting to be held by conference call on January 30, 2013, and, consistent with the revised processes for developing, obtaining stakeholder input on, and obtaining NERC Board approval for, proposed revisions to the NERC ROP, materials relating to the Board agenda items were posted on the NERC website on January 14, 2013, more than 15 days prior to the Board meeting. The January 14 posting included (1) a redlined version of Appendix 4D showing the proposed changes as compared to currently-effective Appendix 4D; (2) a matrix summarizing each stakeholder comment that was received during the comment period and identifying the additional revisions that were made (or proposed changes that were eliminated) in response to the comments; (3) a redlined version of Appendix 4D showing the incremental changes that had been made subsequent to the close of the comment period to reflect the comments; and (4) a memorandum describing the proposed revisions to Appendix 4D including a summary of the proposed revisions on a section-by-section basis.<sup>14</sup> At the January 30, 2013 meeting, the NERC Board approved the proposed revisions to Appendix 4D for submission to the applicable governmental authorities.

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<sup>14</sup> The documents posted in advance of the January 30 Board meeting are available here: <http://www.nerc.com/page.php?cid=1|8|169>.

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**ATTACHMENT 1A**

**NERC Rules of Procedure Appendix 4D**

***Procedure for Requesting and Receiving Technical Feasibility Exceptions to  
NERC Critical Infrastructure Protection Standards***

**Clean Version**

**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**APPENDIX 4D TO THE RULES OF PROCEDURE**

**Effective: [DATE]**



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**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**1.0 INTRODUCTION**

**1.1 Purpose**

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation (NERC) provides the procedure by which a Responsible Entity may request and receive an exception from Strict Compliance with the terms of a Requirement of certain NERC Critical Infrastructure Protection (CIP) Standards on the grounds of technical feasibility or technical limitations. Such an exception is referred to herein as a Technical Feasibility Exception (TFE). This Appendix is intended to implement authorization granted by FERC to allow such exceptions to Applicable Requirements of CIP Standards.<sup>1</sup>

**1.2 Authority**

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. As such, this Appendix has been approved by (i) the NERC Board of Trustees and (ii) FERC. Any future revisions to this Appendix must be adopted in accordance with Article XI, section 2 of the NERC *Bylaws* and Section 1400 of the NERC *Rules of Procedure*, including approval by the NERC Board of Trustees and by FERC, in order to become effective.

**1.3 Scope**

This procedure for requesting and obtaining approval of TFEs is applicable only to those Requirements of CIP Standards CIP-002 through CIP-009 that (i) expressly provide either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement, or (ii) FERC has directed should be subject to this procedure. As of the effective date of this Appendix, in the United States the Applicable Requirements are:

CIP-005-3: R2.4, R2.6, R3.1 and R3.2

CIP-006-3c: R1.1, including the Interpretation in Appendix 2

CIP-007-3: R2.3, R3, R4, R5.3, R 5.3.1, R 5.3.2, R 5.3.3, R6 and R6.3

Subsequent versions of these Requirements that are approved by FERC will continue to be Applicable Requirements, without the need to amend this Appendix to reflect the new version number of the CIP Standards, (i) if the subsequent versions continue to expressly provide either (A) that compliance with their terms is required where or as technically feasible or (B) that

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<sup>1</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, 122 FERC ¶ 61,040 (2008) (*Order No. 706*), at PP 157-222.

technical limitations may preclude compliance with the terms of the Requirement<sup>2</sup>; or (ii) so long as FERC does not direct that the subsequent versions are no longer Applicable Requirements. Other Requirements of CIP Standards may become Applicable Requirements as the result of revisions to the CIP Standards in accordance with the NERC *Bylaws* and *Rules of Procedure* including Appendix 3A, *Standards Process Manual*, or as a result of FERC directive. NERC shall maintain a current list of Applicable Requirements on its website.

#### **1.4 Obligations of Canadian Entities and Cross-Border Regional Entities**

A Responsible Entity that is a Canadian Entity seeking a TFE shall work with the Regional Entity, NERC, and Applicable Governmental Authorities, to the extent permitted under Canadian federal or provincial laws, and without being obligated to authorize the disclosure of information prohibited by Canadian federal or provincial law from disclosure to FERC or other Applicable Governmental Authorities in the U.S., to comply with the requirements of this Appendix. A Canadian Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the Canadian Entity in order to utilize this Appendix to obtain a TFE. Cross-Border Regional Entities shall implement this TFE Procedure in a manner consistent with their memoranda of understanding with Canadian Entities and Canadian Applicable Governmental Authorities concerning compliance monitoring and enforcement activities in particular provinces.

#### **2.0. DEFINITIONS**

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:

**2.1 Annual Report:** The report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 13.0 of this Appendix.

**2.2 Applicable Requirement:** A Requirement of a CIP Standard that (i) expressly provides either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement; or (ii) is subject to this Appendix by FERC directive.

**2.3 Canadian Entity:** A Responsible Entity that is organized under Canadian federal or provincial law.

**2.4 Critical Infrastructure Protection Standard or CIP Standard:** Any of NERC Reliability Standards CIP-002 through CIP-009.

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<sup>2</sup> *Order No. 706* at P 157 and note 65 and P 178.

**2.5 Classified National Security Information:** Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

**2.6 CMEP:** The NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the NERC *Rules of Procedure*) or the Commission-approved program of a Regional Entity, as applicable.

**2.7 Compliant Date:** The date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

**2.8 Confidential Information:** (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) any other information that is designated as Confidential Information in Section 11.0 of this Appendix.

**2.9 Covered Asset:** A Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

**2.10 Delegate:** A person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

**2.11 Effective Date:** The date, as specified in a notice disapproving a TFE Request or terminating an approved TFE, on which the disapproval or termination becomes effective.

**2.12 Eligible Reviewer:** A person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

**2.13 Expiration Date:** The date on which an approved TFE expires.

**2.14 FERC:** The United States Federal Energy Regulatory Commission.

**2.15 FOIA:** The U.S. Freedom of Information Act, 5 U.S.C. §552.

**2.16 Hearing Procedures:** Attachment 2 to the NERC or Regional Entity CMEP, as applicable.

**2.17 Material Change:** A change in facts that modifies Required Information in connection with an approved TFE. Examples of a Material Change could include, but are not limited to an

## Appendix 4D - Technical Feasibility Exception Procedure

increase in device count (but not a decrease), change in compensating measures, change in statement of basis for approval for the TFE, a change in the Expiration Date of the TFE, or a Responsible Entity achieving Strict Compliance with the Applicable Requirement.

**2.18 Material Change Report:** A report submitted by the Responsible Entity to the Regional Entity in the event there is a Material Change to the facts underlying an approved TFE pursuant to Section 4.0.

**2.19 NRC:** The United States Nuclear Regulatory Commission.

**2.20 NRC Safeguards Information:** Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21-73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

**2.21 Protected FOIA Information:** Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)), under any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

**2.22 Responsible Entity:** An entity that is registered for a reliability function in the NERC Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the “Applicability” section of the CIP Standard.

**2.23 Required Information:** The information required to be provided in a TFE Request, as specified in Section 4.0 of this Appendix.

**2.24 Senior Manager:** The person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity’s implementation of, and adherence to, the CIP Standards.

**2.25 Strict Compliance:** Compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

**2.26 Technical Feasibility Exception or TFE:** An exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in Section 3.0 of this Appendix.

**2.27 TFE Request:** A request submitted by a Responsible Entity in accordance with this Appendix for an exception from Strict Compliance with an Applicable Requirement.

### **3.0. BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION**

**3.1.** A Responsible Entity may request and obtain approval for a TFE on the grounds that Strict Compliance with an Applicable Requirement, evaluated in the context or environment

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of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

- (i) is not technically possible or is precluded by technical limitations; or
- (ii) is operationally infeasible or could adversely affect reliability of the Bulk Electric System to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (iii) while technically possible and operationally feasible, cannot be achieved by the Responsible Entity's Compliant Date for the Applicable Requirement, due to factors such as, for example, scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or
- (iv) would pose safety risks or issues that, in the determination of the Regional Entity, outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (v) would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or
- (vi) would require the incurrence of costs that, in the determination of the Regional Entity, far exceed the benefits to the reliability of the Bulk Electric System of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset and to the Reliable Operation of the related Facility and the Bulk Electric System of continuing to operate with the existing equipment is minimal in the determination of the Regional Entity.

**3.2.** A TFE does not relieve the Responsible Entity of its obligation to comply with the Applicable Requirement. Rather, a TFE authorizes an alternative (to Strict Compliance) means of compliance with the Applicable Requirement through the use of compensating measures and/or mitigating measures that achieve at least a comparable level of security for the Bulk Electric System as would Strict Compliance with the Applicable Requirement.

**3.3.** The burden to justify approval of a TFE Request in accordance with the provisions of this Appendix is on the Responsible Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Appendix, to make all determinations as

to whether a TFE Request has met the criteria for approval.<sup>3</sup> NERC and the Regional Entities shall carry out the activities described in Section 11.0 of this Appendix to provide consistency in the review and approval or disapproval of TFE Requests across Regional Entities and across TFE Requests.

**3.4.** A TFE Request may be approved without a specified Expiration Date, however, in the event of a Material Change to the facts underlying an approved TFE, the Responsible Entity shall submit a Material Change Report providing continuing justification for the TFE or verifying Strict Compliance with the Applicable Requirement has been achieved.

#### **4.0. FORM, CONTENTS AND SUBMISSION OF A TFE REQUEST OR MATERIAL CHANGE REPORT**

##### **4.1. Submissions for a TFE Request or Material Change Report by Class**

A Responsible Entity may seek a TFE for class-based categories of devices. A list of permissible class-based categories of devices will be maintained on NERC's website. In addition, a Responsible Entity may use one submission to request a TFE from the same Applicable Requirement for multiple, similar Covered Assets (either at the same location or at different locations within the geographic boundaries of a Regional Entity) on the same basis, with the same compensating measures and/or mitigating measures, and with the same proposed Expiration Date, the TFE Requests for all the Covered Assets may be included in one submission.

##### **4.2. Form and Format of TFE Request or Material Change Report**

A TFE Request or a Material Change Report shall consist of the following Required Information:

- (i) Category (pursuant to Section 4.1 or "other")
- (ii) Device ID (assigned by the Responsible Entity)
- (iii) Physical location of device
- (iv) Actual or estimated date in which device is placed into production
- (v) Proposed TFE Expiration Date (if any)

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<sup>3</sup> If a Regional Entity that is a Responsible Entity seeks a TFE in its role as a Responsible Entity, the Regional Entity shall submit its TFE Request to, as applicable, NERC or the Regional Entity that has assumed, by agreement approved by NERC and FERC, compliance monitoring and enforcement responsibilities with respect to the first Regional Entity's registered functions, as applicable. In such case NERC or the second Regional Entity, as applicable, will perform the duties and responsibilities of the "Regional Entity" specified in this Appendix.



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- (vi) Actual TFE Expiration Date (if any)
- (vii) CIP Standard
- (viii) Applicable Requirement
- (ix) Whether the TFE is also filed with other Regional Entities (if yes, which ones)
- (x) Basis for approval (pursuant to Section 3.0)
- (xi) Compensating and mitigating measures
- (xii) Date of completion of compensating and mitigating measures (if in progress, estimated completion date and time schedule)
- (xiii) Whether the TFE is related to a Self-Certification or Self-Report
- (xiv) Whether the has TFE has been previously approved
- (xv) TFE I.D., if known

A statement, signed and dated by the Responsible Entity's Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request or Material Change Report and approved the proposed compensating measures and/or mitigating measures and the implementation plan, and that on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request or Material Change Report is warranted pursuant to the criteria specified in Section 3.1 of this Appendix.

A sample submittal will be maintained on NERC's website. Additional information may be requested by the Regional Entity as necessary or appropriate. At the discretion of the Regional Entity, information may be verified at a subsequent Compliance Audit or Spot Check or other form of monitoring.

A removal of a device from a TFE containing multiple devices of the same class does not require the filing of a Material Change Report. The information can be communicated during the next required submittal associated with the same class.

At the time of the first (a) initial TFE Request or (b) Material Change Report that is required to be submitted after approval of this Appendix 4D, a Responsible Entity will submit a complete submittal in the form contemplated in this section to reflect previously approved and pending TFEs as well as any new information being submitted. This one-time submittal will be followed by the maintenance of the TFE information associated with such Responsible Entity, either through additional TFE Requests or Material Change Reports pertaining to TFE Requests

already approved. The submittal of this baseline TFE submittal will not reopen any TFEs already approved under the old process or restart the review process of pending TFEs.

**4.3. [Deleted]**

**4.4 Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information**

**4.4.1.** Upon reasonable advance notice from a Regional Entity or NERC, and subject to Section 4.4.2, the Responsible Entity must provide the Regional Entity or NERC (i) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the TFE Request, and (ii) with access to the Covered Asset(s) and the related Facility(ies) for purposes of making a physical review and inspection.

**4.4.2.** If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall only be reviewed by a representative or representatives of the Regional Entity or NERC (which may include contractors) who are Eligible Reviewers.

**4.4.3.** The Regional Entity or NERC, as applicable, will work cooperatively with the Responsible Entity to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure.

**4.5 [Deleted]**

**5.0 REVIEW AND APPROVAL/DISAPPROVAL OF TFE REQUESTS OR MATERIAL CHANGE REPORTS**

**5.1. Identification of TFE Requests or Material Change Reports**

**5.1.1.** Upon receipt of a TFE Request or Material Change Report, the Regional Entity (i) will assign a unique identifier to the TFE Request or Material Change Report.

**5.1.2.** The unique identifier assigned to the TFE Request or Material Change Report will be in the form of XXXX-YYY-TFEZZZZZ, where “XXXX” is the year in which the TFE Request is received by the Regional Entity (*e.g.*, “2009”); “YYY” is the acronym for the

Regional Entity within whose Region the Covered Asset is located<sup>4</sup>; and “ZZZZZ” is the sequential number of the TFE Requests received by the Regional Entity in that year. In the case of a Material Change Report, “-AZ” will be added to the end of the identifier, where “Z” is the number of the Material Change Report to the TFE.

## **5.2 Review of TFE Request or Material Change Report for Approval or Disapproval**

**5.2.1** The Regional Entity shall review a TFE Request or Material Change Report to determine if it should be approved in accordance with Section 3.1 of this Appendix, or disapproved. As part of its 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 that is necessary to support the TFE Request; may conduct one or more physical inspections of the Covered Asset(s) and the related Facility(ies); may request additional information from the Responsible Entity; and may engage in discussions with the Responsible Entity concerning possible revisions to the TFE Request or Material Change Report.

**5.2.2.** The Regional Entity shall complete its review of the TFE Request or Material Change Report and make its determination of whether the TFE Request or Material Change Report is approved or disapproved, and issue a notice (in accordance with Sections 5.2.4 or 5.2.5) stating the TFE Request is approved or disapproved, within 60 days after receipt of the TFE Request. In addition, the Regional Entity may extend the 60-day time period for individual TFE Requests or Material Change Reports by issuing a notice to the Responsible Entity, with a copy to NERC, stating the revised date by which the Regional Entity will issue its notice approving or disapproving the TFE Request or Material Change Report.

**5.2.3.** The Regional Entity may approve or disapprove the TFE Request or Material Change Report in whole or in part, even if the TFE Request or Material Change Report is for two or more Covered Assets subject to the same Applicable Requirement or if it covers class-based categories of devices.

**5.2.4.** If the Regional Entity approves the TFE Request or Material Change Report, the Regional Entity shall issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request or Material Change Report is approved.

**5.2.5.** If the Regional Entity disapproves the TFE Request or Material Change Report, the Regional Entity shall issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request or Material Change Report is disapproved and stating the reasons for the disapproval. In its notice disapproving a TFE Request, the Regional Entity may also, but is not

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<sup>4</sup> The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Regional Entity/Texas Reliability Entity); and WECC (Western Electricity Coordinating Council).

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required to, state any revisions to the TFE Request the Regional Entity has identified, based on its review of the TFE Request, that, if made by the Responsible Entity, would result in approval of the TFE Request. Such revisions may include, but are not limited to, changes to the Responsible Entity's proposed (i) compensating measures and/or mitigating measures, (ii) implementation schedules, or (iii) Expiration Date.

**5.2.6.** A notice disapproving a TFE Request or Material Change Report shall state an Effective Date, which shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice. Following the Effective Date, the Responsible Entity is subject to issuance of a Notice of Alleged Violation by the Regional Entity with respect to the Applicable Requirement that was the subject of the disapproved TFE Request or Material Change Report, unless the Responsible Entity has achieved Strict Compliance with the Applicable Requirement. Provided, that if the Effective Date occurs prior to the Responsible Entity's Compliant Date for the Applicable Requirement, then the Responsible Entity is not subject to issuance of a Notice of Alleged Violation until the Compliant Date. A Notice of Alleged Violation issued with respect to the Applicable Requirement shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

**5.2.7** Within thirty (30) calendar days after issuing a notice approving or disapproving a TFE Request or Material Change Report, the Regional Entity shall submit a report to NERC setting forth the basis on which the Regional Entity approved or disapproved the TFE Request or Material Change Report. If the Regional Entity has disapproved the TFE Request or Material Change Report and determined there were exceptional circumstances justifying an Effective Date more than ninety-one (91) days after the date of issuance of the notice, the Regional Entity's report to NERC shall include a description of such exceptional circumstances.

**5.2.8** A Responsible Entity may submit to NERC information that the Responsible Entity believes demonstrates that the approval or disapproval by a Regional Entity of a TFE Request or Material Change Report submitted by the Responsible Entity constitutes an inconsistent application of the criteria specified in Section 3.1 as compared to other determinations of TFE Requests or Material Change Reports made by the same Regional Entity or another Regional Entity for the same type of Covered Assets, and with such submission may suggest that NERC request the Regional Entity to reconsider its approval or disapproval of the TFE Request or Material Change Report. A Responsible Entity's submission to NERC under this Section 5.2.8 shall be in writing and shall set forth (i) the TFE Request or Material Change Report for which the Responsible Entity received a determination that the Responsible Entity believes represents an inconsistent application of the criteria specified in Section 3.1 (using the identifier assigned to the TFE Request or Material Change Report pursuant to Section 5.1.2), (ii) a copy of the Regional Entity's notice of approval or disapproval of the TFE Request or Material Change Report, and (iii) a description of the inconsistency in determinations that the Responsible Entity believes has occurred, including specific reference(s) to any other determinations of TFE Requests or Material Change Reports for the same type of Covered Assets that the Responsible

Entity believes constitutes inconsistent application of the criteria specified in Section 3.1. The Responsible Entity's submission shall provide a clear and compelling demonstration that inconsistent applications of the criteria specified in Section 3.1 have occurred in the determinations of two or more TFE Requests or Material Change Reports for the same type of Covered Assets made by the same Regional Entity or two or more Regional Entities. NERC will provide a copy of the Responsible Entity's submission to the Regional Entity that approved or disapproved the TFE Request or Material Change Report that is the subject of the submission. NERC will review the Responsible Entity's submission and the reports submitted by the Regional Entity or Regional Entities pursuant to Section 5.2.7 with respect to the TFE Requests or Material Change Reports that are the subject of the Responsible Entity's submission, and may decide, in accordance with Section 5.2.9, to request the Regional Entity to reconsider its determination. NERC will send a written notice to the Responsible Entity stating that NERC has determined to request reconsideration by the Regional Entity or has determined not to request reconsideration by the Regional Entity, as applicable.

**5.2.9** NERC may request the Regional Entity to reconsider the approval or disapproval of a TFE Request or Material Change Report, solely on the grounds that the approval or disapproval would result in inconsistent application of the criteria specified in Section 3.1 as compared to determinations made on TFE Requests or Material Change Reports for the same type of Covered Assets by the same Regional Entity or a different Regional Entity. Requests for reconsideration on any other grounds are not allowed. A request for reconsideration shall be submitted in writing to the Regional Entity and shall set forth (i) the TFE Request or Material Change Report that is the subject of the request for reconsideration (using the identifier assigned to the TFE Request or Material Change Report pursuant to Section 5.1.2), (ii) a copy of the Regional Entity's notice of approval or disapproval of the TFE Request or Material Change Report, and (iii) a description of the inconsistency in determinations on which NERC relies as the basis for the request for reconsideration, including specific reference(s) to other determinations of TFE Requests or Material Change Reports for the same type of Covered Asset that NERC believes constitutes inconsistent application of the criteria specified in Section 3.1. The Regional Entity shall consider the request for reconsideration and shall issue a notice to NERC and the affected Responsible Entity(ies) approving, disapproving or rejecting the TFE Request or Material Change Report in accordance with Section 5.2.4, Section 5.2.5, Section 5.2.6 and/or Section 9.2, as applicable, within one hundred twenty (120) days following receipt of the request for reconsideration. A determination on a request for reconsideration approving or disapproving a TFE Request or Material Change Report shall be effective prospectively only, from its Effective Date, provided, that if a Regional Entity receives a request for reconsideration of the disapproval of a TFE Request or Material Change Report prior to the Effective Date of the notice of disapproval, the Regional Entity shall issue a notice to the affected Responsible Entity pursuant to Section 5.2.6, as applicable, suspending the Effective Date pending determination of the request for reconsideration.

**5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request or Material Change Report is Being Reviewed**

The Responsible Entity shall not be subject to imposition of any findings of violations, or

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imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE Request or Material Change Report, for the period from:

- (i) the date that is sixty (60) calendar days after submission of the TFE Request or Material Change Report,  
to:
- (ii) (A) the date of the Regional Entity's notice that the TFE Request or Material Change Report is approved, or (B) the Effective Date of the Regional Entity's notice that the TFE Request or Material Change Report is disapproved, whichever is applicable.

Provided, that:

- (1) while a TFE Request or Material Change Report is undergoing review, the Regional Entity shall not issue a Notice of Alleged Violation to the Responsible Entity for being noncompliant with the Applicable Requirement that is the subject of the TFE Request or Material Change Report during the period on and after the TFE Request or Material Change Report was submitted;
- (2) if the TFE Request or Material Change Report is approved, the Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of the TFE Request or Material Change Report, during the period from submission of the TFE Request to the date of the Regional Entity's notice that the TFE Request or Material Change Report is approved; and
- (3) if the TFE Request or Material Change Report is disapproved, and is found by the Regional Entity, NERC or FERC to have been fraudulent or submitted not in good faith, the provisions of this Section 5.3 shall not apply, the Responsible Entity shall be subject to imposition of findings of violations and imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement that was the subject of the TFE Request or Material Change Report, for the entire period subsequent to the date the TFE Request or Material Change Report was submitted, and the Responsible Entity's fraudulent or not-in-good-faith submission of the TFE Request or Material Change Report shall be an aggravating factor in determining the amounts of Penalties or sanctions to be imposed on the Responsible Entity for such violations.

### **6.0 IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE OR MATERIAL CHANGE REPORT**

**6.1.** The Responsible Entity will be required to implement compensating measures

and/or mitigating measures as described, and in accordance with the time schedule(s) set forth, in the approved TFE.

**6.2.** In the event the TFE has been approved with an Expiration Date, the Responsible Entity will be required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirements and eliminating the TFE, as described, and in accordance with the time schedule set forth, in the approved TFE.

**6.3.** [Deleted]

**6.4.** [Deleted]

**6.5.** If there is a Material Change in the facts underlying approval of the TFE, the Responsible Entity shall submit a Material Change Report to the Regional Entity, within sixty (60) calendar days of identification or discovery of the Material Change, supporting the continuing need and justification for the approved TFE or verifying that the Responsible Entity has achieved Strict Compliance with the Applicable Requirement pursuant to Section 4.0. The Regional Entity may extend the period for submittal of the Material Change Report upon request and with good cause shown.

**6.6.** [Deleted]

**6.7.** [Deleted]

**6.8.** If a Responsible Entity fails to implement or maintain a compensating measure or mitigating measure or fails to conduct research or analysis towards achieving Strict Compliance, in accordance with the approved TFE; or fails to submit one or more reports by the required submission date, the Responsible Entity (i) is required to file a Self-Report in accordance with Section 3.5 of the CMEP, and (ii) will be subject to issuance of a Notice of Alleged Violation for noncompliance with the Applicable Requirement that is the subject of the approved TFE. Any such Notice of Alleged Violation shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

## **7.0 AMENDMENT OF A PENDING TFE REQUEST**

A Responsible Entity may amend a pending TFE Request that is under review by a Regional Entity, for the purpose of providing additional or revised Required Information during the 60-day review period. Submission of an amendment to a pending TFE Request may, in the Regional Entity's discretion, extend the time period for the Regional Entity's review of the TFE Request but does not require the restart of the approval process.

## **8.0 COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE**

**8.1.** Following approval of a Responsible Entity's TFE Request, subsequent Compliance Audits of the Responsible Entity may include audit of (i) the Responsible Entity's implementation and maintenance of the compensating measures and/or mitigating measures

specified in the approved TFE, in accordance with the time schedule set forth in the approved TFE, and (ii) the Responsible Entity's implementation of steps and conduct of research and analyses towards achieving Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE. These topics shall be included in such Compliance Audits regardless of whether a Compliance Audit was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

**8.2** The first Compliance Audit of the Responsible Entity subsequent to the Expiration Date shall include audit of the Responsible Entity's Strict Compliance with the Applicable Requirement that was the subject of the approved TFE. This topic shall be included in such Compliance Audit regardless of whether it was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

## **9.0 TERMINATION OF AN APPROVED TFE**

**9.1.** An approved TFE shall remain in effect unless it terminates on its Expiration Date, it is terminated at an earlier date pursuant to this Section 9.0, the Responsible Entity achieves Strict Compliance with the Applicable Requirement or there is a material misrepresentation by the Responsible Entity as to the facts relied upon by the Regional Entity in approving the TFE.

**9.2.** The Responsible Entity may terminate an approved TFE by submitting a notice to the Regional Entity stating that the Responsible Entity is terminating the TFE and the Effective Date of the termination.

**9.3.** A Regional Entity or NERC may terminate an approved TFE based on the results of a Spot Check initiated and conducted pursuant to the CMEP to determine whether the approved TFE should be terminated prior to its Effective Date or should be revised to impose additional or different requirements or to advance the Expiration Date to an earlier date. Following issuance to the Responsible Entity of a draft Spot Check report concluding that the approved TFE should be terminated or revised (including by advancement of the Expiration Date), and opportunity for the Responsible Entity to submit comments on the draft Spot Check report, the Regional Entity or NERC, if it has determined that the approved TFE should be terminated or revised, shall issue a notice of termination to the Responsible Entity (with a copy to NERC if the notice is issued by the Regional Entity) stating the Effective Date of termination of the approved TFE. The Effective Date shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice of termination, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the issuance of the notice of termination due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice of termination.

**9.4.** The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict



Compliance with an Applicable Requirement that is the subject of a TFE that has been terminated, until the Effective Date of the notice of termination.

## **10.0 HEARINGS AND APPEALS PROCESS FOR RESPONSIBLE ENTITY**

The Responsible Entity may raise issues relating to the disapproval of its TFE Request or the termination of the approved TFE in the hearing concerning the Notice of Alleged Violation, proposed Penalty or sanction, or Mitigation Plan components.

## **11.0 CONSISTENCY IN APPROVAL AND DISAPPROVAL OF TFE REQUESTS AND MATERIAL CHANGE REPORTS**

**11.1.** NERC and the Regional Entities will engage in the activities specified in this Section 11.0 for the purpose of assuring consistency in the review, approval and disapproval of TFE Requests and Material Change Reports (i) among the Regional Entities, (ii) among different types of Covered Assets that are subject to the same Applicable Requirement, (iii) with respect to the application of the criteria specified in Section 3.1 for approval of TFE Requests or Material Change Reports, including the comparison of safety risks and costs of Strict Compliance to reliability benefits of Strict Compliance, and (iv) with respect to the types of mitigating measures and compensating measures that are determined to be appropriate to support approval of TFE Requests or Material Change Reports. In appropriate cases, NERC will submit a request for reconsideration to a Regional Entity in accordance with Section 5.2.9.

**11.2.** The activities in which NERC and the Regional Entities will engage for the purposes stated in Section 11.1 will include, but not be limited to, the following activities:

1. [Deleted]
2. NERC will maintain, as Confidential Information, based on reports submitted by Regional Entities, a catalogue of the types of Covered Assets for which TFE Requests or Material Change Reports from the various Applicable Requirements have been approved and disapproved. The catalogue will be accessible to the Regional Entities for their use in connection with their substantive reviews of TFE Requests or Material Change Reports.
3. NERC and the Regional Entities will form a committee comprised of NERC and Regional Entity representatives involved in the review of TFE Requests or Material Change Reports and other Critical Infrastructure program activities, which shall be charged to review approved and disapproved TFE Requests or Material Change Reports for consistency and to issue such guidance to the Regional Entities, as Confidential Information, as the committee deems appropriate to achieve greater consistency in approval and disapproval of TFE Requests or Material Change Reports in the respects listed in Section 11.1. The committee shall include persons with appropriate subject matter expertise for the responsibilities and activities of the committee.

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4. NERC will submit to the FERC and to other Applicable Governmental Entities an annual informational report containing the following information concerning the manner in which Regional Entities have made determinations to approve or disapprove TFE Requests or Material Change Reports based on the criteria of Section 3.1:
  - (i) whether any issues were identified during the period covered by the informational report with respect to the consistency of the determinations made based on the criteria in Section 3.1, either within a Regional Entity or among Regional Entities;
  - (ii) a description of any such identified consistency issues;
  - (iii) how each consistency issue was resolved;
  - (iv) the numbers of TFE Requests or Material Change Reports for which reconsideration was requested pursuant to Section 5.2.9 based on purported inconsistencies in determinations applying the criteria in Section 3.1 and the numbers of such requests which resulted in TFE Requests or Material Change Reports being approved or disapproved; and
  - (v) whether NERC has developed or is in a position to develop a uniform framework for Regional Entities to use to appraise the reliability benefits of Strict Compliance when making determinations based on the criteria in Section 3.1(iv) and (vi).

The first such informational report shall cover the period through June 30, 2011, and shall be filed with FERC and other Applicable Governmental Entities no later than September 28, 2011. Subsequent annual informational reports shall cover the period from July 1 through June 30 and shall be filed within 90 days following the end of the period covered by the report.

If NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an informational report in order to satisfy the information requirements specified above, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the informational report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance

with their procedures for receiving confidential, proprietary and other protected information.

## **12.0 CONFIDENTIALITY OF TFE REQUESTS, MATERIAL CHANGE REPORTS AND RELATED INFORMATION**

Except as expressly stated in this Section 12.0, the submission, review, and approval/disapproval of TFE Requests or Material Change Reports, and the implementation and termination of approved TFEs, shall be maintained as confidential. The following Documents are Confidential Information and shall be treated as such in accordance with Section 1500 of the NERC *Rules of Procedure*:

- (i) All TFE Requests and amendments or Material Change Reports submitted, filed or made available by the Responsible Entity;
- (ii) All notices issued by a Regional Entity or NERC pursuant to this Appendix;
- (iii) All requests for Documents or information made by a Regional Entity or NERC pursuant to this Appendix;
- (iv) All submissions of Documents and information by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;
- (v) All post-approval reports submitted by a Responsible Entity pursuant to this Appendix;
- (vi) All correspondence, notes, drawings, drafts, work papers, electronic communications, reports and other Documents generated by a Regional Entity or NERC in connection with a TFE Request or Material Change Report, including (without limiting the scope of this provision) in connection with reviewing a TFE Request or Material Change Report and supporting Documents and information submitted, filed or made available by the Responsible Entity, conducting a physical inspection of the Covered Asset(s) or the related Facility(ies), reviewing and analyzing post-approval reports submitted by a Responsible Entity, or conducting compliance monitoring processes pursuant to the CMEP with respect to a TFE Request or Material Change Report or approved TFE.
- (vii) All guidance issued to Regional Entities pursuant to Section 11.2 by NERC or by the committee described in Section 11.2(3), and all minutes of meetings of the committee and discussions between or among its members.
- (viii) All submissions by Responsible Entities to NERC pursuant to Section 5.2.8.
- (ix) All requests for reconsideration pursuant to Section 5.2.9.

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- (x) Any confidential appendix to an informational report prepared and submitted pursuant to Section 11.2(4) or to an Annual Report prepared and submitted pursuant to Section 13.0.

### **13.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES**

#### **13.1. Contents of Annual Report**

NERC shall submit an Annual Report to FERC that provides a Wide-Area analysis or analyses, which NERC shall prepare in consultation with the Regional Entities, regarding the use of TFEs and the impact on the reliability of the Bulk Electric System, as required by Paragraphs 220 and 221 of *Order No. 706*, which state:

. . . [W]e direct the ERO to submit an annual report to the Commission that provides a wide-area analysis regarding use of the technical feasibility exception and the effect on Bulk-Power System reliability. The annual report must address, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception. . . [T]he report should contain aggregated data with sufficient detail for the Commission to understand the frequency with which specific provisions are being invoked as well as high level data regarding mitigation and remediation plans over time and by region . . . .

Copies of the Annual Report shall be filed with other Applicable Governmental Authorities. The Annual Report shall contain, at a minimum, the following information:

- (i) The frequency of use of the TFE Request process, disaggregated by Regional Entity and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, including (A) the numbers of TFE Requests that have been submitted and approved/disapproved during the preceding year and cumulatively since the effective date of this Appendix, (B) the numbers of unique Covered Assets for which TFEs have been approved, (C) the numbers of approved TFEs that are still in effect as of on or about the date of the Annual Report; (D) the numbers of approved TFEs that reached their Expiration Dates or were terminated during the preceding year; and (E) the numbers of approved TFEs that are scheduled to reach their Expiration Dates during the ensuing year;
- (ii) Categorization of the submitted and approved TFE Requests to date by broad categories such as the general nature of the TFE Request, the Applicable Requirements covered by submitted and approved TFE Requests, and the types of Covered Assets that are the subject of submitted and approved TFE Requests;
- (iii) Categorization of the circumstances or justifications on which the approved TFEs to date were submitted and approved, by broad categories such as the need to avoid

## Appendix 4D - Technical Feasibility Exception Procedure

replacing existing equipment with significant remaining useful lives, unavailability of suitable equipment to achieve Strict Compliance in a timely manner, or conflicts with other statutes and regulations applicable to the Responsible Entity;

(iv) Categorization of the compensating measures and mitigating measures implemented and maintained by Responsible Entities pursuant to approved TFEs, by broad categories of compensating measures and mitigating measures and by types of Covered Assets;

(v) For each TFE Request that was disapproved, and for each TFE that was terminated, but for which, due to exceptional circumstances as determined by the Regional Entity, the Effective Date was later than the latest date specified in Section 5.2.6, or 9.3, as applicable, a statement of the number of days the Responsible Entity was not subject to imposition of findings of violations of the Applicable Requirement or imposition of Penalties or sanctions pursuant to Section 5.3.

(vi) A discussion, on an aggregated basis, of Compliance Audit results and findings concerning the implementation and maintenance of compensating measures and mitigating measures, and the implementation of steps and the conduct of research and analyses to achieve Strict Compliance with the Applicable Requirements, by Responsible Entities in accordance with approved TFEs;

(vii) Assessments, by Regional Entity (and for more discrete areas within a Regional Entity, if appropriate) and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, of the Wide-Area impacts on the reliability of the Bulk Electric System of approved TFEs in the aggregate, including the compensating measures and mitigating measures that have been implemented;

(viii) Discussion of efforts to eliminate future reliance on TFEs;

(ix) Data and information regarding Material Change Reports, including the number of Material Change Reports filed annually and information regarding the types of circumstances or events that led to Material Changes, as well as any additional information NERC believes would be useful; and

(x) Additional information about TFEs and their expiration dates, including the number of TFEs by expiration year and CIP Standard requirement, the percentage of currently approved TFEs without expiration dates, and the number of new TFEs approved without expiration dates annually.

### **13.2. [Deleted]**

### **13.3. Due Date for Annual Reports**

The first Annual Report shall cover the period through June 30, 2011, and shall be filed with FERC and with other Applicable Governmental Authorities no later than 90 days after the

end of such calendar quarter. Subsequent Annual Reports shall be filed at one year intervals thereafter.

**13.4. Annual Report to be a Public Document; Confidential Appendix**

It is the intent of this Appendix that the Annual Report be a public document. Therefore, NERC shall prepare the annual report in such a manner that it does not include or disclose any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information. However, if NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an Annual Report in order to satisfy the information requirements specified in this Appendix or required by FERC or other Applicable Governmental Authorities, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the Annual Report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance with their procedures for receiving confidential, proprietary and other protected information.

**13.5. Responsible Entities Must Cooperate in Preparation of Annual Report**

As specified in Paragraph 220, note 74 of Order No. 706, Responsible Entities must cooperate with NERC and Regional Entities in providing information deemed necessary for NERC to fulfill its reporting obligations to FERC.

**ATTACHMENT 1B**

**NERC Rules of Procedure Appendix 4D**

***Procedure for Requesting and Receiving Technical Feasibility Exceptions to  
NERC Critical Infrastructure Protection Standards***

**Redlined Version**

**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**APPENDIX 4D TO THE RULES OF PROCEDURE**

Effective: ~~January 31, 2012~~[DATE]



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**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**1.0 INTRODUCTION**

**1.1 Purpose**

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation (NERC) provides the procedure by which a Responsible Entity may request and receive an exception from Strict Compliance with the terms of a Requirement of certain NERC Critical Infrastructure Protection (CIP) Standards on the grounds of technical feasibility or technical limitations. Such an exception is referred to herein as a Technical Feasibility Exception (TFE). This Appendix is intended to implement authorization granted by FERC to allow such exceptions to Applicable Requirements of CIP Standards.<sup>1</sup>

**1.2 Authority**

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. As such, this Appendix has been approved by (i) the NERC Board of Trustees and (ii) FERC. Any future revisions to this Appendix must be adopted in accordance with Article XI, section 2 of the NERC *Bylaws* and Section 1400 of the NERC *Rules of Procedure*, including approval by the NERC Board of Trustees and by FERC, in order to become effective.

**1.3 Scope**

This procedure for requesting and obtaining approval of TFEs is applicable only to those Requirements of CIP Standards CIP-002 through CIP-009 that (i) expressly provide either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement, or (ii) FERC has directed should be subject to this procedure. As of the effective date of this Appendix, in the United States the Applicable Requirements are:

CIP-005-3: R2.4, R2.6, R3.1 and R3.2

CIP-006-3c: R1.1, including the Interpretation in Appendix 2

CIP-007-3: R2.3, R3, R4, R5.3, R 5.3.1, R 5.3.2, R 5.3.3, R6 and R6.3

Subsequent versions of these Requirements that are approved by FERC will continue to be Applicable Requirements, without the need to amend this Appendix to reflect the new version number of the CIP Standards, (i) if the subsequent versions continue to expressly provide either (A) that compliance with their terms is required where or as technically feasible or (B) that

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<sup>1</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, 122 FERC ¶ 61,040 (2008) (*Order No. 706*), at PP 157-222.

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technical limitations may preclude compliance with the terms of the Requirement<sup>2</sup>; or (ii) so long as FERC does not direct that the subsequent versions are no longer Applicable Requirements. Other Requirements of CIP Standards may become Applicable Requirements as the result of revisions to the CIP Standards in accordance with the NERC *Bylaws* and *Rules of Procedure* including Appendix 3A, *Standards Process Manual*, or as a result of FERC directive. NERC shall maintain a current list of Applicable Requirements on its website.

### 1.4 Obligations of Canadian Entities and Cross-Border Regional Entities

A Responsible Entity that is a Canadian Entity seeking a TFE shall work with the Regional Entity, NERC, and Applicable Governmental Authorities, to the extent permitted under Canadian federal or provincial laws, and without being obligated to authorize the disclosure of information prohibited by Canadian federal or provincial law from disclosure to FERC or other Applicable Governmental Authorities in the U.S., to comply with the requirements of this Appendix. A Canadian Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the Canadian Entity in order to utilize this Appendix to obtain a TFE. Cross-Border Regional Entities shall implement this TFE Procedure in a manner consistent with their memoranda of understanding with Canadian Entities and Canadian Applicable Governmental Authorities concerning compliance monitoring and enforcement activities in particular provinces.

### 2.0. DEFINITIONS

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:

**2.1 Annual Report:** The report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 13.0 of this Appendix.

**2.2 Applicable Requirement:** A Requirement of a CIP Standard that (i) expressly provides either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement; or (ii) is subject to this Appendix by FERC directive.

**2.3 Canadian Entity:** A Responsible Entity that is organized under Canadian federal or provincial law.

**2.4 Critical Infrastructure Protection Standard or CIP Standard:** Any of NERC Reliability Standards CIP-002 through CIP-009.

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<sup>2</sup> *Order No. 706* at P 157 and note 65 and P 178.

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**2.5 Classified National Security Information:** Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

**2.6 CMEP:** The NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the NERC *Rules of Procedure*) or the Commission-approved program of a Regional Entity, as applicable.

**2.7 Compliant Date:** The date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

**2.8 Confidential Information:** (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) any other information that is designated as Confidential Information in Section 11.0 of this Appendix.

**2.9 Covered Asset:** A Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

**2.10 Delegate:** A person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

**2.11 Effective Date:** The date, as specified in a notice ~~rejecting or~~ disapproving a TFE Request or terminating an approved TFE, on which the ~~rejection,~~ disapproval or termination becomes effective.

**2.12 Eligible Reviewer:** A person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

**2.13 Expiration Date:** The date on which an approved TFE expires.

**2.14 FERC:** The United States Federal Energy Regulatory Commission.

**2.15 FOIA:** The U.S. Freedom of Information Act, 5 U.S.C. §552.

**2.16 Hearing Procedures:** Attachment 2 to the NERC or Regional Entity CMEP, as applicable.

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**2.17 Material Change:** A change in facts that modifies Required Information in connection with an approved TFE. Examples of a Material Change could include, but are not limited to an increase in device count (but not a decrease), change in compensating measures, change in statement of basis for approval for the TFE, a change in the Expiration Date of the TFE, or a Responsible Entity achieving Strict Compliance with the Applicable Requirement.

**2.18 Material Change Report:** A report submitted by the Responsible Entity to the Regional Entity in the event there is a Material Change to the facts underlying an approved TFE pursuant to Section 4.0.

**2.172.19 NRC:** The United States Nuclear Regulatory Commission.

**2.1820 NRC Safeguards Information:** Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21-73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

**2.19 Part A Required Information:** ~~Required Information that is to be provided in Part A of a Responsible Entity's TFE Request.~~

**2.20 Part B Required Information:** ~~Required Information that is to be provided in Part B of a Responsible Entity's TFE Request.~~

**2.21 Protected FOIA Information:** Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)), under any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

**2.22 Responsible Entity:** An entity that is registered for a reliability function in the NERC Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the "Applicability" section of the CIP Standard.

**2.23 Required Information:** The information required to be provided in a TFE Request, as specified in Section 4.0 of this Appendix.

**2.24 Senior Manager:** The person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity's implementation of, and adherence to, the CIP Standards.

**2.25 Strict Compliance:** Compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

**2.26 Technical Feasibility Exception or TFE:** An exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in Section 3.0 of this Appendix.

**2.27 TFE Request:** A request submitted by a Responsible Entity in accordance with this Appendix for an exception from Strict Compliance with an Applicable Requirement.

### **3.0. BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION**

**3.1.** A Responsible Entity may request and obtain approval for a TFE on the grounds that Strict Compliance with an Applicable Requirement, evaluated in the context or environment of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

- (i) is not technically possible or is precluded by technical limitations; or
- (ii) is operationally infeasible or could adversely affect reliability of the Bulk Electric System to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (iii) while technically possible and operationally feasible, cannot be achieved by the Responsible Entity's Compliant Date for the Applicable Requirement, due to factors such as, for example, scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or
- (iv) would pose safety risks or issues that, in the determination of the Regional Entity, outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (v) would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or
- (vi) would require the incurrence of costs that, in the determination of the Regional Entity, far exceed the benefits to the reliability of the Bulk Electric System of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset and to the Reliable Operation of the related Facility and the Bulk Electric System of continuing to operate with the existing equipment is minimal in the determination of the Regional Entity.

**3.2.** A TFE does not relieve the Responsible Entity of its obligation to comply with the Applicable Requirement. Rather, a TFE authorizes an alternative (to Strict Compliance) means of compliance with the Applicable Requirement through the use of compensating measures and/or mitigating measures that achieve at least a comparable level of security for the Bulk Electric System as would Strict Compliance with the Applicable Requirement.

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**3.3.** The burden to justify approval of a TFE Request in accordance with the provisions of this Appendix is on the Responsible Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Appendix, to make all determinations as to whether a TFE Request has met the criteria for approval.<sup>3</sup> NERC and the Regional Entities shall carry out the activities described in Section 11.0 of this Appendix to provide consistency in the review and approval or disapproval of TFE Requests across Regional Entities and across TFE Requests.

~~3.4. A TFE typically must be requested for, and will be approved only for, a limited duration, until a stated Expiration Date. The Responsible Entity will be expected to achieve Strict Compliance with the Applicable Requirement by the Expiration Date. Under limited, justified circumstances, a~~ TFE Request may be approved without a specified Expiration Date, ~~subject to periodic review to verify~~however, in the event of a Material Change to the facts underlying an approved TFE, the Responsible Entity shall submit a Material Change Report ~~providing~~ continuing justification for the TFE ~~or verifying Strict Compliance with the Applicable Requirement has been achieved.~~

### **4.0. FORM, CONTENTS AND SUBMISSION OF A TFE REQUEST OR MATERIAL CHANGE REPORT**

#### ~~4.1. Separate Submissions for Each~~ **4.1. Separate Submissions for Each TFE Request or Material Change Report by Class**

~~A separate TFE Request shall be submitted for each Applicable Requirement pertaining to each Covered Asset for which the Responsible Entity seeks a TFE. There is one exception to this requirement: where they may seek a TFE for class-based categories of devices. A list of permissible class-based categories of devices will be maintained on NERC's website. In addition, a Responsible Entity seeks TFEs may use one submission to request a TFE from the same Applicable Requirement for multiple, similar Covered Assets (either at the same location or at different locations within the geographic boundaries of a Regional Entity) on the same basis, with the same compensating measures and/or mitigating measures, and with the same proposed Expiration Date, the TFE Requests for all the Covered Assets may be included in one submission. A TFE Request may not be submitted for Covered Assets located within the geographic boundaries of different Regional Entities.~~

#### **4.2. Form and Format of TFE Request or Material Change Report**

<sup>3</sup> If a Regional Entity that is a Responsible Entity seeks a TFE in its role as a Responsible Entity, the Regional Entity shall submit its TFE Request to, as applicable, NERC or the Regional Entity that has assumed, by agreement approved by NERC and FERC, compliance monitoring and enforcement responsibilities with respect to the first Regional Entity's registered functions, as applicable. In such case NERC or the second Regional Entity, as applicable, will perform the duties and responsibilities of the "Regional Entity" specified in this Appendix.



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A TFE Request or a Material Change Report shall consist of ~~two parts:~~ the following Required Information:

~~(i) Part A of the TFE Request is the notification to a Regional Entity that a Responsible Entity is requesting a TFE. Part A must be submitted in a secure electronic form using the template provided by the Regional Entity. Regional Entities will use the Part A Required Information for initial screening to accept or reject the TFE Request.~~

~~(ii) Part B of the TFE Request contains the detailed material to support a TFE Request and includes the Documents, drawings, and other information necessary to provide the details and justification for the requested TFE. Part B must also include a detailed description of the compensating measures and/or mitigating measures the Responsible Entity will implement while the TFE is in effect. The Part B Required Information must be available at the Responsible Entity's location for review by the Regional Entity and/or NERC beginning on the date the TFE Request is submitted.~~

~~(iii) A Regional Entity may also require the Responsible Entity to file all or a portion of the Part B Required Information with the Regional Entity, provided that (A) the information can be filed in a secure manner that does not compromise the confidentiality of any Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information, and (B) the Responsible Entity shall not be required to file with a Regional Entity any Part B Required Information if, and to the extent that, such filing is prohibited by law.~~

### ~~4.3. Required Information to be Included in the TFE Request~~

~~4.3.1. Part A of a TFE Request shall contain the Part A Required Information specified in this Section 4.3.1 and shall be submitted to the Regional Entity using its template referred to in Section 4.2. Consistent with the summary nature of the Part A Required Information, the Regional Entity's template may provide lists of responses to be selected by the Responsible Entity and/or limited space for narrative descriptions, for the Part A Required Information listed below. Failure to provide all Part A Required Information will result in rejection of the TFE Request as incomplete. The Part A Required Information shall consist of the following information:~~

- ~~1. Responsible Entity name.~~
- ~~2. Responsible Entity NERC ID.~~
- ~~3. TFE Request submittal date.~~
- ~~4. Whether the TFE Request is an original TFE Request or an amended TFE Request; and if it is an Amended TFE Request, the identification number of the original TFE Request.~~
- ~~5. Name, mailing address, phone number, facsimile number and E-mail address of the Responsible Entity's technical contact person for the TFE Request.~~

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- ~~6. Applicable Requirement for which the TFE is being requested.~~
- ~~7. Number of Covered Assets for which the TFE is being requested.~~
- ~~8. Whether the Responsible Entity is filing a similar TFE Request(s) with one or more other Regional Entities, and if yes, the name(s) of the other Regional Entity(ies).~~
- ~~9. The type(s) of equipment, process, or procedure at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement, for which the TFE is being requested.~~
- ~~10. The basis for the TFE Request from the criteria specified in Section 3.1.~~
- ~~11. A brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement.~~
- ~~12. The estimated impact on Reliable Operation of the Bulk Electric System of the Responsible Entity if the compensating measures and mitigating measures are not sufficient to achieve security for the Covered Assets, and cyber security is compromised.~~
- ~~13. A brief description of the compensating measures and/or mitigating measures that are planned or have been implemented in lieu of achieving Strict Compliance with the Applicable Requirement.~~
- ~~14. A statement as to whether or not the compensating measures and/or mitigating measures have been fully implemented at the time the TFE Request is submitted.~~
- ~~15. As applicable, (i) the actual implementation date(s) for the compensating measures and/or mitigating measures, and/or (ii) the proposed date(s) for implementing the proposed compensating measures and/or mitigating measures.~~
- ~~16. Whether the Responsible Entity has a proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement; if yes, the proposed Expiration Date and a description of the plan for terminating the TFE; if no, an explanation as to why a TFE with no Expiration Date is being requested.~~
- ~~17. Whether the TFE Request is supported, in whole or in part, by any of the following: Classified National Security Information; NRC Safeguards Information; or Protected FOIA Information.~~
- ~~18. A statement of the Responsible Entity's understanding of the requirement to submit timely periodic and other reports pertaining to the approved TFE.~~

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- (i) Category (pursuant to Section 4.1 or “other”)
- (ii) Device ID (assigned by the Responsible Entity)
- (iii) Physical location of Device
- (iv) Actual or estimated date in which device is placed into production
- (v) Proposed TFE Expiration Date (if any)
- (vi) Actual TFE Expiration Date (if any)
- (vii) CIP Standard
- (viii) Applicable Requirement
- (ix) Whether the TFE is also filed with other Regional Entities (if yes, which ones)
- (x) Basis for Approval (pursuant to Section 3.0)
- (xi) Compensating and mitigating measures
- (xii) Date of completion of compensating and mitigating measures (if in progress, estimated completion date and time schedule)
- (xiii) Whether the TFE is related to a Self-Certification or Self-Report
- (xiv) Whether the TFE has been previously approved
- (xv) TFE I.D., if known

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19.—A statement, signed and dated by the Responsible Entity’s Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request or Material Change Report and approved the proposed compensating measures and/or mitigating measures and the implementation plan, and that on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request or Material Change Report is warranted pursuant to the criteria specified in Section 3.1 of this Appendix.

A sample submittal will be maintained on NERC’s website. Additional information may be requested by the Regional Entity as necessary or appropriate. At the discretion of the Regional Entity, information may be verified at a subsequent Compliance Audit or Spot Check or other form of monitoring.

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A removal of a device from a TFE containing multiple devices of the same class does not require the filing of a Material Change Report. The information can be communicated during the next required submittal associated with the same class.

At the time of the first (a) initial TFE Request or (b) Material Change Report that is required to be submitted after approval of this Appendix 4D, a Responsible Entity will submit a complete submittal in the form contemplated in this section to reflect previously approved and pending TFEs as well as any new information being submitted. This one-time submittal will be followed by the maintenance of the TFE information associated with such Responsible Entity, either through additional TFE Requests or Material Change Reports pertaining to TFE Requests already approved. The submittal of this baseline TFE submittal will not reopen any TFEs already approved under the old process or restart the review process of pending TFEs.

~~4.3.2 Part B of a TFE Request shall contain the Part B Required Information specified in this Section 4.3.2. Failure to include all Part B Required Information may result in disapproval of the TFE Request. The information provided for items 3 through 8 below should be comprehensive, as opposed to the summary information provided on the Part A submission, and should include any supporting Documents.~~

- ~~1. A copy of Part A of the TFE Request.~~
- ~~2. Location(s) of the Covered Asset(s) for which the TFE is (are) requested.~~
- ~~3. A statement of the basis, consistent with Section 3.1 of this Appendix, on which the Responsible Entity contends the TFE Request should be approved, with supporting documentation. Without limiting the content of this statement, it must include: (i) a description of the specific equipment, device(s), process(es) or procedure(s) at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement, for which the TFE is requested; and (ii) an explanation of why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement.~~
- ~~4. A description of the compensating measures and/or mitigating measures the Responsible Entity proposes to implement and maintain as an alternate approach to achieving Strict Compliance with the Applicable Requirement, with supporting documentation. Without limiting the content of this description, it must include an explanation of how, and the extent to which, the proposed compensating measures and/or mitigating measures will reduce or prevent any adverse impacts on (i) the reliable operation of the Covered Asset(s) and (ii) the Reliable Operation of the Element(s) and Facility(ies) of the Bulk Electric System for which the Responsible Entity is responsible, resulting from the failure to achieve Strict Compliance with the Applicable Requirement, including reducing or eliminating any vulnerabilities resulting from lack of Strict Compliance.~~

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- ~~5. An assessment of the impacts on (i) reliable operation of the Covered Asset(s) and (ii) Reliable Operation of the Elements and the Facility(ies), of the Bulk Electric System for which the Responsible Entity is responsible, if the proposed compensating measures and/or mitigating measures are insufficient or unsuccessful.~~
- ~~6. The Responsible Entity's proposed time schedule for implementing the proposed compensating measures and/or mitigating measures. The TFE Request may identify compensating measures and/or mitigating measures that have already been implemented by the Responsible Entity.~~
- ~~7. The Responsible Entity's proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement, including the Responsible Entity's proposed Expiration Date. The Responsible Entity should either (i) describe the specific steps it plans to take to achieve Strict Compliance and the planned schedule for each step, including the date by which the Responsible Entity intends to achieve Strict Compliance with the Applicable Requirement, and/or (ii) describe the specific research, design, analytical, testing or other activities the Responsible Entity intends to engage in to determine a means of achieving Strict Compliance with the Applicable Requirement, and the Responsible Entity's proposed time schedule for these activities.~~
- ~~8. If the Responsible Entity contends it will not be possible for it to achieve Strict Compliance with the Applicable Requirement and that the TFE being requested should have no Expiration Date, an explanation of why it will not be possible for the Responsible Entity to establish a date by which it can achieve Strict Compliance with the Applicable Requirement, why the TFE Request should be approved with no Expiration Date, and under what conditions, if any, the Responsible Entity will be able to achieve Strict Compliance with the Applicable Requirement at a future unknown and unspecified date.~~
- ~~9. The Responsible Entity's commitment to file quarterly reports with the Regional Entity on the Responsible Entity's progress (i) in implementing the proposed compensating measures and/or mitigating measures, and (ii) towards achieving Strict Compliance with the Applicable Requirement.~~
- ~~10. If the proposed Expiration Date is more than one (1) year from the date the TFE Request is submitted, or if the Responsible Entity contends the TFE should have no Expiration Date, the Responsible Entity's agreement to submit annual reports to the Regional Entity on the continued need for and justification for the TFE, for so long as the TFE remains in effect.~~
- ~~11. If the TFE Request is supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information, a statement identifying which of these categories each such item of information falls into and explaining why each such item of information is~~

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~~Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information. If the Responsible Entity is prohibited by law from disclosing any Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), the TFE Request shall identify the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is subject to such restrictions on disclosure and shall identify the criteria which a person must meet in order to be an Eligible Reviewer of the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information.~~

12. ~~A statement, signed and dated by the Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request and approved the compensating measures and/or mitigating measures and the implementation plan, and on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria in Section 3.1 of this Appendix.~~

~~4.3.3. All scheduled implementation dates and other activity dates, and the Expiration Date, in the TFE Request shall be stated as specific calendar dates.~~

### 4.3. [Deleted]

#### **4.4 Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information**

**4.4.1.** Upon reasonable advance notice from a Regional Entity or NERC, and subject to Section 4.4.2, the Responsible Entity must provide the Regional Entity or NERC (i) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the ~~Part B Required Information~~[TFE Request](#), and (ii) with access to the Covered Asset(s) and the related Facility(ies) for purposes of making a physical review and inspection.

**4.4.2.** If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall only be reviewed by a representative or representatives of the Regional Entity or NERC (which may include contractors) who are Eligible Reviewers.

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**4.4.3.** The Regional Entity or NERC, as applicable, will work cooperatively with the Responsible Entity to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure.

### **4.5** ~~[Deleted]~~ Submission of TFE Request in Advance of Compliant Date

~~—The Responsible Entity should submit a TFE Request at least sixty (60) calendar days prior to the Responsible Entity's Compliant Date for the Applicable Requirement that is the subject of the TFE Request, to avoid the risk that the initial screening will not be completed by the Compliant Date and the Responsible Entity will become subject to issuance of a Notice of Alleged Violation for noncompliance with the Applicable Requirement. However, if a Responsible Entity whose Compliant Date for an Applicable Requirement was on or before December 31, 2009, submits a TFE Request for the Applicable Requirement by January 31, 2010 (either pursuant to this Appendix or pursuant to NERC Compliance Process Bulletin #2009-007 and Attachments 1 and 2 to that Bulletin), the Compliant Date will be deemed to be the date of submission of the TFE Request for purposes of Section 5.3 of this Appendix.~~

## **5.0** ~~REVIEW, ACCEPTANCE/REJECTION, AND APPROVAL/DISAPPROVAL OF~~ TFE REQUESTS OR MATERIAL CHANGE REPORTS

### **5.1.** ~~Initial Screening~~ Identification of TFE Request for Acceptance ~~Requests or Rejection~~ Material Change Reports

**5.1.1.** Upon receipt of ~~Part A of~~ a TFE Request or Material Change Report, the Regional Entity (i) will assign a unique identifier to the TFE Request, ~~and (ii) will review the TFE Request to determine that the TFE Request is for an Applicable Requirement and that all Part A Required Information has been provided~~ or Material Change Report.

**5.1.2.** The unique identifier assigned to the TFE Request or Material Change Report will be in the form of XXXX-YYY-TFEZZZZ, where "XXXX" is the year in which the TFE Request is received by the Regional Entity (e.g., "2009"); "YYY" is the acronym for the Regional Entity within whose Region the Covered Asset is located<sup>4</sup>; and "ZZZZ" is the sequential number of the TFE Requests received by the Regional Entity in that year. ~~In the TFE Request is amended or resubmitted~~ case of a Material Change Report, "-AZ" will be added to the end of the identifier, where "Z" is the number of the ~~amendment~~ Material Change Report to the TFE ~~Request~~.

<sup>4</sup> The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (Reliability First Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Regional Entity/Texas Reliability Entity); and WECC (Western Electricity Coordinating Council).

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~~5.1.3. (a) The Regional Entity will typically complete its initial screening within sixty (60) calendar days after receiving the TFE Request.~~

~~(b) 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 TFE Requests within sixty (60) calendar days after receipt and substantive reviews of TFE Requests within one year after receipt, 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 TFE Requests during the specified period of time. The alternative time period objective and work plan shall be publicized by issuance of a notice to all Registered Entities within the geographic boundaries of the Regional Entity and by posting on the Regional Entity's website.~~

~~(c) If the Regional Entity is unable to complete its initial screening within sixty (60) calendar days after receiving the TFE Request, the Responsible Entity will not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement that is the subject of the TFE Request, beginning on the sixty first (61<sup>st</sup>) calendar day after the Regional Entity received the TFE Request and continuing thereafter in accordance with Section 5.3.~~

~~5.1.4. If, based on its initial screening, the Regional Entity determines the TFE Request is for an Applicable Requirement and contains all Part A Required Information, and that the Part A Required Information provided by the Responsible Entity indicates the TFE Request satisfies the criteria for approval of a TFE in Section 3.1 of this Appendix, the Regional Entity shall send a notice to the Responsible Entity, with a copy to NERC, accepting the TFE Request as complete.~~

~~5.1.5. If the Regional Entity determines, based on its review of the Part A Required Information provided by the Responsible Entity, that the TFE Request (i) is not for an Applicable Requirement, or (ii) does not contain all Part A Required Information, or (iii) does not satisfy the criteria for approval of a TFE in Section 3.1 of this Appendix, the Regional Entity shall send a notice to the Responsible Entity, with a copy to NERC, rejecting the TFE Request. The notice shall state an Effective Date which shall be no less than thirty one (31) calendar days and no more than sixty one (61) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than sixty one (61) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice.~~

~~5.1.6. If the Regional Entity rejects the TFE Request because not all Part A Required Information was provided, the Regional Entity's notice shall identify the Part A Required Information that was not provided in the TFE Request. The Responsible Entity may resubmit the TFE Request with all Part A Required Information included. If the Responsible Entity resubmits the TFE Request with all Part A Required Information included prior to the Effective Date, the~~



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~~Responsible Entity will not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement that is the subject of the TFE Request, during the period the Regional Entity is conducting initial screening of the resubmitted TFE Request. The Responsible Entity may resubmit a TFE Request pursuant to this Section 5.1.6 only one time.~~

~~5.1.7. The Regional Entity must either accept the TFE Request in its entirety or reject the TFE Request in its entirety, even if the TFE Request is for two or more Covered Assets subject to the same Applicable Requirement.~~

### 5.2 ~~Substantive~~ Review of TFE Request or Material Change Report for Approval or Disapproval

5.2.1 The Regional Entity shall ~~conduct a substantive review of an accepted a~~ TFE Request or Material Change Report to determine if it should be approved in accordance with Section 3.1 of this Appendix, or disapproved. ~~The Regional Entity will conduct the substantive review in accordance with established compliance monitoring processes under the CMEP, such as a Compliance Audit or Spot Check. The compliance monitoring activity may be conducted solely for the purpose of substantive review of the TFE Request, or may include review of the Responsible Entity's compliance with other Reliability Standards.~~ As part of its substantive review, the Regional Entity may request access to and review the ~~Part B~~ Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information that is necessary to support the TFE Request; may conduct one or more physical inspections of the Covered Asset(s) and the related Facility(ies); may request additional information from the Responsible Entity; and may engage in discussions with the Responsible Entity concerning possible revisions to the TFE Request or Material Change Report.

5.2.2. The Regional Entity shall complete its ~~substantive~~ review of the TFE Request or Material Change Report and make its determination of whether the TFE Request or Material Change Report is approved or disapproved, and issue a notice (in accordance with Sections 5.2.4 or 5.2.5) stating the TFE Request is approved or disapproved, within ~~one (1) year~~ 60 days after receipt of the TFE Request ~~or within an alternative time period objective as specified in a work plan established under Section 5.1.3(b)~~. In addition, the Regional Entity may extend the ~~one-year~~ 60-day time period for individual TFE Requests or Material Change Reports by issuing a notice to the Responsible Entity, with a copy to NERC, stating the revised date by which the Regional Entity will issue its notice approving or disapproving the TFE Request or Material Change Report.

5.2.3. The Regional Entity ~~must either approve the TFE Request in its entirety~~ may approve or disapprove the TFE Request or Material Change Report in whole or in its entirety ~~part~~, even if the TFE Request or Material Change Report is for two or more Covered Assets subject to the same Applicable Requirement or if it covers class-based categories of devices.

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**5.2.4.** If the Regional Entity approves the TFE Request or Material Change Report, the Regional Entity shall issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request or Material Change Report is approved.

**5.2.5.** If the Regional Entity disapproves the TFE Request or Material Change Report, the Regional Entity shall issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request or Material Change Report is disapproved and stating the reasons for the disapproval. In its notice disapproving a TFE Request, the Regional Entity may also, but is not required to, state any revisions to the TFE Request the Regional Entity has identified, based on its review of the TFE Request, that, if made by the Responsible Entity, would result in approval of the TFE Request. Such revisions may include, but are not limited to, changes to the Responsible Entity's proposed (i) compensating measures and/or mitigating measures, (ii) implementation schedules, or (iii) Expiration Date. ~~If the Responsible Entity submits an amended TFE Request to the Regional Entity incorporating, to the Regional Entity's satisfaction, the revisions to the TFE Request set forth in the notice of disapproval, then the Regional Entity shall issue a notice, in accordance with Section 5.2.4, approving the revised TFE Request.~~

**5.2.6.** A notice disapproving a TFE Request or Material Change Report shall state an Effective Date, which shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice. Following the Effective Date, the Responsible Entity is subject to issuance of a Notice of Alleged Violation by the Regional Entity with respect to the Applicable Requirement that was the subject of the disapproved TFE Request or Material Change Report, unless the Responsible Entity ~~(i) has submitted an amended TFE Request in accordance with Section 5.2.5, or (ii)~~ has achieved Strict Compliance with the Applicable Requirement. Provided, that if the Effective Date occurs prior to the Responsible Entity's Compliant Date for the Applicable Requirement, then the Responsible Entity is not subject to issuance of a Notice of Alleged Violation until the Compliant Date. A Notice of Alleged Violation issued with respect to the Applicable Requirement shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

**5.2.7** Within thirty (30) calendar days after issuing a notice approving or disapproving a TFE Request or Material Change Report, the Regional Entity shall submit a report to NERC setting forth the basis on which the Regional Entity approved or disapproved the TFE Request or Material Change Report. If the Regional Entity has disapproved the TFE Request or Material Change Report and determined there were exceptional circumstances justifying an Effective Date more than ninety-one (91) days after the date of issuance of the notice, the Regional Entity's report to NERC shall include a description of such exceptional circumstances.

**5.2.8** A Responsible Entity may submit to NERC information that the Responsible Entity believes demonstrates that the approval, or disapproval ~~or rejection~~ by a Regional Entity of a TFE Request or Material Change Report submitted by the Responsible Entity constitutes an inconsistent application of the criteria specified in Section 3.1 as compared to other

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determinations of TFE Requests [or Material Change Reports](#) made by the same Regional Entity or another Regional Entity for the same type of Covered Assets, and with such submission may suggest that NERC request the Regional Entity to reconsider its approval, ~~or disapproval~~ ~~or rejection~~ of the TFE Request [or Material Change Report](#). A Responsible Entity's submission to NERC under this Section 5.2.8 shall be in writing and shall set forth (i) the TFE Request [or Material Change Report](#) for which the Responsible Entity received a determination that the Responsible Entity believes represents an inconsistent application of the criteria specified in Section 3.1 (using the identifier assigned to the TFE Request [or Material Change Report](#) pursuant to Section 5.1.2), (ii) a copy of the Regional Entity's notice of approval, ~~or disapproval~~ ~~or rejection~~ of the TFE Request [or Material Change Report](#), and (iii) a description of the inconsistency in determinations that the Responsible Entity believes has occurred, including specific reference(s) to any other determinations of TFE Requests [or Material Change Reports](#) for the same type of Covered Assets that the Responsible Entity believes constitutes inconsistent application of the criteria specified in Section 3.1. The Responsible Entity's submission shall provide a clear and compelling demonstration that inconsistent applications of the criteria specified in Section 3.1 have occurred in the determinations of two or more TFE Requests [or Material Change Reports](#) for the same type of Covered Assets made by the same Regional Entity or two or more Regional Entities. NERC will provide a copy of the Responsible Entity's submission to the Regional Entity that approved, ~~or disapproved~~ ~~or rejected~~ the TFE Request [or Material Change Report](#) that is the subject of the submission. NERC will review the Responsible Entity's submission and the reports submitted by the Regional Entity or Regional Entities pursuant to Section 5.2.7 with respect to the TFE Requests [or Material Change Reports](#) that are the subject of the Responsible Entity's submission, and may decide, in accordance with Section 5.2.9, to request the Regional Entity to reconsider its determination. NERC will send a written notice to the Responsible Entity stating that NERC has determined to request reconsideration by the Regional Entity or has determined not to request reconsideration by the Regional Entity, as applicable.

**5.2.9** NERC may request the Regional Entity to reconsider the approval, ~~or disapproval~~ ~~or rejection~~ of a TFE Request [or Material Change Report](#), solely on the grounds that the approval, ~~or disapproval~~ ~~or rejection~~ would result in inconsistent application of the criteria specified in Section 3.1 as compared to determinations made on TFE Requests [or Material Change Reports](#) for the same type of Covered Assets by the same Regional Entity or a different Regional Entity. Requests for reconsideration on any other grounds are not allowed. A request for reconsideration shall be submitted in writing to the Regional Entity and shall set forth (i) the TFE Request [or Material Change Report](#) that is the subject of the request for reconsideration (using the identifier assigned to the TFE Request [or Material Change Report](#) pursuant to Section 5.1.2), (ii) a copy of the Regional Entity's notice of approval, ~~or disapproval~~ ~~or rejection~~ of the TFE Request [or Material Change Report](#), and (iii) a description of the inconsistency in determinations on which NERC relies as the basis for the request for reconsideration, including specific reference(s) to other determinations of TFE Requests [or Material Change Reports](#) for the same type of Covered Asset that NERC believes constitutes inconsistent application of the criteria specified in Section 3.1. The Regional Entity shall consider the request for reconsideration and shall issue a notice to NERC and the affected Responsible Entity(ies) approving, disapproving or rejecting the TFE Request [or Material Change Report](#) in accordance with ~~Section 5.1.4, Section 5.1.5, Section 5.2.4, Section 5.2.5, Section 5.2.6 and/or Section 9.2,~~

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as applicable, within one hundred twenty (120) days following receipt of the request for reconsideration. A determination on a request for reconsideration approving, ~~or~~ disapproving ~~or rejecting~~ a TFE Request or Material Change Report shall be effective prospectively only, from its Effective Date, provided, that if a Regional Entity receives a request for reconsideration of the ~~rejection or~~ disapproval of a TFE Request or Material Change Report prior to the Effective Date of the notice of ~~rejection or~~ disapproval, the Regional Entity shall issue a notice to the affected Responsible Entity pursuant to Section ~~5.1.5 or Section 5.2.6~~, as applicable, suspending the Effective Date pending determination of the request for reconsideration.

### 5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request or Material Change Report is Being Reviewed

The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE Request or Material Change Report, for the period from:

- (i) ~~the earlier of (A) the date of the Regional Entity's notice that the TFE Request is accepted as complete and (B) the date that is sixty (60) calendar days after submission of the TFE Request~~ or Material Change Report,

to:

- (ii) (A) the date of the Regional Entity's notice that the TFE Request or Material Change Report is approved, or (B) the Effective Date of the Regional Entity's notice that the TFE Request is rejected, or (B) the date of the Regional Entity's notice that the TFE Request is approved, or (C) the Effective Date of the Regional Entity's notice that the TFE Request or Material Change Report is disapproved, whichever is applicable.

Provided, that:

- (1) while a TFE Request or Material Change Report is undergoing ~~initial screening~~ review, the Regional Entity shall not issue a Notice of Alleged Violation to the Responsible Entity for being noncompliant with the Applicable Requirement that is the subject of the TFE Request or Material Change Report during the period on and after the TFE Request or Material Change Report was submitted;
- (2) if the TFE Request or Material Change Report is ~~accepted~~ approved, the Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of the TFE Request or Material Change Report, during the period from submission of the

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TFE Request to the date of the Regional Entity's notice that the TFE Request ~~is accepted~~ or Material Change Report is approved; and

- (3) if the TFE Request ~~is disapproved~~ or Material Change Report is disapproved, and is found by the Regional Entity, NERC or FERC to have been fraudulent or submitted not in good faith, the provisions of this Section 5.3 shall not apply, the Responsible Entity shall be subject to imposition of findings of violations and imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement that was the subject of the TFE Request or Material Change Report, for the entire period subsequent to the date the TFE Request or Material Change Report was submitted, and the Responsible Entity's fraudulent or not-in-good-faith submission of the TFE Request or Material Change Report shall be an aggravating factor in determining the amounts of Penalties or sanctions to be imposed on the Responsible Entity for such violations.

**6.0 IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE OR MATERIAL CHANGE REPORT**

**6.1.** The Responsible Entity will be required to implement compensating measures and/or mitigating measures as described, and in accordance with the time schedule(s) set forth, in the approved TFE.

**6.2.** ~~Unless~~ In the event the TFE has been approved with ~~an~~ an Expiration Date, the Responsible Entity will be required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirements and eliminating the TFE, as described, and in accordance with the time schedule set forth, in the approved TFE.

**6.3.** ~~The Responsible Entity shall submit quarterly reports to the Regional Entity on (i) the Responsible Entity's progress in implementing the compensating measures and/or mitigating measures the Responsible Entity is adopting pursuant to the approved TFE, and (ii) the Responsible Entity's progress in implementing steps and/or conducting research and/or analysis to achieve Strict Compliance with the Applicable Requirement.~~

**6.4.** ~~All quarterly reports shall be submitted to the Regional Entity by no later than the last business day of the month immediately following the end of the calendar quarter for which the report is being submitted.~~

**6.5.** If there is a Material Change in the facts underlying approval of the TFE, the Responsible Entity shall submit a Material Change Report to the Regional Entity, within sixty (60) calendar days of identification or discovery of the Material Change, supporting the continuing need and justification for the approved TFE or verifying that the Responsible Entity has achieved Strict Compliance with the Applicable Requirement pursuant to Section 4.0. The Regional Entity may extend the period for submittal of the Material Change Report upon request and with good cause shown. If the Expiration Date of the TFE is more than one (1) year after the TFE Request was submitted, or if the approved TFE has no Expiration Date, the Responsible

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~~Entity shall submit annual reports to the Regional Entity supporting the continuing need and justification for the approved TFE. The first annual report shall be due on the last business day of the month immediately following the end of the fourth calendar quarter after acceptance of the TFE Request. The annual report shall contain information as specified in items 1 through 10 and 13 of Section 4.3.2, but revised as appropriate based on current information as of the date of the report. The annual report shall not propose revisions to implementation, research and reporting dates that were specified in the approved TFE, but rather shall report on the Responsible Entity's progress and accomplishments in carrying out the implementation and research activities. Any revisions to implementation, research and reporting dates, or to other requirements, that were specified in the approved TFE shall be requested by an amendment filing in accordance with Section 7.2 of this Appendix~~

~~6.6. **[Deleted]** Each report submitted pursuant to Section 6.3 or Section 6.5 shall include a statement, signed and dated by the Senior Manager or Delegate, that the Senior Manager or Delegate has read, and approved the submission of, the report.~~

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~~6.7. **[Deleted]** The Regional Entity shall issue an acknowledgement notice to the Responsible Entity and to NERC that a report has been received, but no other issuances shall be required from the Regional Entity in response to submission of such a report.~~

6.8. If a Responsible Entity fails to implement or maintain a compensating measure or mitigating measure or fails to conduct research or analysis towards achieving Strict Compliance, in accordance with the approved TFE; or fails to submit one or more reports by the required submission date, the Responsible Entity (i) is required to file a Self-Report in accordance with Section 3.5 of the CMEP, and (ii) will be subject to issuance of a Notice of Alleged Violation for noncompliance with the Applicable Requirement that is the subject of the approved TFE. Any such Notice of Alleged Violation shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

~~6.9. At least thirty (30) calendar days prior to the Expiration Date, the Responsible Entity shall submit a report to the Regional Entity, signed and dated by the Senior Manager or Delegate, demonstrating that the Responsible Entity has achieved, or will be able to achieve by the Expiration Date, Strict Compliance with the Applicable Requirement.~~

## 7.0 AMENDMENT OF A PENDING TFE REQUEST ~~OR APPROVED TFE~~

### ~~7.1. —Amendment of a Pending TFE Request~~

A Responsible Entity may ~~at any time~~ amend a pending TFE Request that is under review by a Regional Entity, for the purpose of providing additional or revised Required Information. ~~The Responsible Entity shall submit an amended Part A and shall include in the Part B Required Information a written explanation of what Required Information is being added or revised and the purpose of the amendment, during the 60-day review period.~~ Submission of an amendment to a pending TFE Request may, in the Regional Entity's discretion, extend the time period for the Regional Entity's ~~initial screening or substantive~~ review, ~~as applicable~~, of the TFE Request ~~but does not require the restart of the approval process.~~

**7.2. — Amendment of an Approved TFE**

~~7.2.1. A Responsible Entity may submit an amendment to an approved TFE for the purpose of requesting revision to any of the requirements specified in the approved TFE, such as, for example, revisions to the specific compensating measures and/or mitigating measures to be implemented, revisions to the schedule for implementing the compensating measures and/or mitigating measures, or a change in the Expiration Date. The Responsible Entity shall submit all the Part A Required Information, as amended, as specified in Section 4.3.1, and make available the Part B Required Information, as amended, as specified in Section 4.3.2. The Responsible Entity shall also include in the Part B Required Information a written explanation of the amendment, the reason for and purpose of the amendment, and the reason the requirements in the approved TFE should be revised.~~

~~7.2.2. The Regional Entity shall review the amended Part A Required Information to determine if it is complete, and shall issue a notice to the Responsible Entity, with a copy to NERC, stating if the amendment is accepted as complete or rejected as incomplete. If the Regional Entity issues a notice that the amendment is accepted as complete, the Regional Entity shall conduct a substantive review of the amendment, including such review of the amended Part B Required Information as the Regional Entity deems necessary, to determine if the amended TFE Request should be approved or disapproved, and shall issue a notice of approval or disapproval, in accordance with Section 5.2. If the Regional Entity determines the amendment should be approved, the TFE as amended replaces the previously approved TFE.~~

~~7.2.3. An approved TFE that is the subject of an amendment filing remains in effect unless and until the amendment is approved by the Regional Entity.~~

**8.0 COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE**

**8.1.** Following approval of a Responsible Entity's TFE Request, subsequent Compliance Audits of the Responsible Entity ~~conducted prior to the Expiration Date shall~~ may include audit of (i) the Responsible Entity's implementation and maintenance of the compensating measures and/or mitigating measures specified in the approved TFE, in accordance with the time schedule set forth in the approved TFE, and (ii) the Responsible Entity's implementation of steps and conduct of research and analyses towards achieving Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE. These topics shall be included in such Compliance Audits regardless of whether a Compliance Audit was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

**8.2** The first Compliance Audit of the Responsible Entity subsequent to the Expiration Date shall include audit of the Responsible Entity's Strict Compliance with the Applicable Requirement that was the subject of the approved TFE. This topic shall be included in such Compliance Audit regardless of whether it was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

## 9.0 TERMINATION OF AN APPROVED TFE

9.1. An approved TFE shall ~~terminate~~remain in effect unless it terminates on its Expiration Date, ~~unless~~ it is terminated at an earlier date pursuant to this Section 9.0, the Responsible Entity achieves Strict Compliance with the Applicable Requirement or there is a material misrepresentation by the Responsible Entity as to the facts relied upon by the Regional Entity in approving the TFE.

9.2. The Responsible Entity may terminate an approved TFE by submitting a notice to the Regional Entity stating that the Responsible Entity is terminating the TFE and the Effective Date of the termination.

9.3. A Regional Entity or NERC may terminate an approved TFE based on the results of a Spot Check initiated and conducted pursuant to the CMEP to determine whether the approved TFE should be terminated prior to its Effective Date or should be revised to impose additional or different requirements or to advance the Expiration Date to an earlier date. Following issuance to the Responsible Entity of a draft Spot Check report concluding that the approved TFE should be terminated or revised (including by advancement of the Expiration Date), and opportunity for the Responsible Entity to submit comments on the draft Spot Check report, the Regional Entity or NERC, if it has determined that the approved TFE should be terminated or revised, shall issue a notice of termination to the Responsible Entity (with a copy to NERC if the notice is issued by the Regional Entity) stating the Effective Date of termination of the approved TFE. The Effective Date shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice of termination, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the issuance of the notice of termination due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice of termination.

9.4. The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of Penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE that has been terminated, until the Effective Date of the notice of termination.

## 10.0 HEARINGS AND APPEALS PROCESS FOR RESPONSIBLE ENTITY

~~—A Responsible Entity whose TFE Request has been rejected or disapproved, or whose approved TFE has been terminated, and thereafter receives a Notice of Alleged Violation for the Applicable Requirement that was the subject of the TFE Request or the approved TFE, is entitled to a hearing before the Regional Entity Hearing Body (or before the NERC Compliance and Certification Committee if NERC is the Compliance Enforcement Authority with respect to the Responsible Entity's compliance with the Applicable Requirement), in accordance with the Hearing Procedures, if the Responsible Entity contests the Notice of Alleged Violation, the proposed Penalty or sanction, or Mitigation Plan components. The Responsible Entity may raise issues relating to the rejection of—~~The Responsible Entity may raise issues relating to the



disapproval of its TFE Request or the termination of the approved TFE in the hearing concerning the Notice of Alleged Violation, proposed Penalty or sanction, or Mitigation Plan components.

#### **11.0 CONSISTENCY IN APPROVAL AND DISAPPROVAL OF TFE REQUESTS AND MATERIAL CHANGE REPORTS**

**11.1.** NERC and the Regional Entities will engage in the activities specified in this Section 11.0 for the purpose of assuring consistency in the review, approval and disapproval of TFE Requests and Material Change Reports (i) among the Regional Entities, (ii) among different types of Covered Assets that are subject to the same Applicable Requirement, (iii) with respect to the application of the criteria specified in Section 3.1 for approval of TFE Requests or Material Change Reports, including the comparison of safety risks and costs of Strict Compliance to reliability benefits of Strict Compliance, and (iv) with respect to the types of mitigating measures and compensating measures that are determined to be appropriate to support approval of TFE Requests or Material Change Reports. In appropriate cases, NERC will submit a request for reconsideration to a Regional Entity in accordance with Section 5.2.9.

**11.2.** The activities in which NERC and the Regional Entities will engage for the purposes stated in Section 11.1 will include, but not be limited to, the following activities:

1. ~~[Deleted] NERC will review the reports of approved and disapproved TFE Requests submitted by the Regional Entities pursuant to Section 5.2.7 as the reports are received, and based on its review of such reports, NERC will issue to the Regional Entities, as Confidential Information, such guidance as NERC deems appropriate to achieve greater consistency in approval and disapproval of TFE Requests in the respects listed in Section 11.1.~~
2. NERC will maintain, as Confidential Information, based on reports submitted by Regional Entities, a catalogue of the types of Covered Assets for which TFE Requests or Material Change Reports from the various Applicable Requirements have been approved and disapproved. The catalogue will be accessible to the Regional Entities for their use in connection with their substantive reviews of TFE Requests or Material Change Reports.
3. NERC and the Regional Entities will form a committee comprised of NERC and Regional Entity representatives involved in the review of TFE Requests or Material Change Reports and other Critical Infrastructure program activities, which shall be charged to review approved and disapproved TFE Requests or Material Change Reports for consistency and to issue such guidance to the Regional Entities, as Confidential Information, as the committee deems appropriate to achieve greater consistency in approval and disapproval of TFE Requests or Material Change Reports in the respects listed in Section 11.1. The committee shall include persons with appropriate subject matter expertise for the responsibilities and activities of the committee.

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4. NERC will submit to the FERC and to other Applicable Governmental Entities an annual informational report containing the following information concerning the manner in which Regional Entities have made determinations to approve or disapprove TFE Requests [or Material Change Reports](#) based on the criteria of Section 3.1:
- (i) whether any issues were identified during the period covered by the informational report with respect to the consistency of the determinations made based on the criteria in Section 3.1, either within a Regional Entity or among Regional Entities;
  - (ii) a description of any such identified consistency issues;
  - (iii) how each consistency issue was resolved;
  - (iv) the numbers of TFE Requests [or Material Change Reports](#) for which reconsideration was requested pursuant to Section 5.2.9 based on purported inconsistencies in determinations applying the criteria in Section 3.1 and the numbers of such requests which resulted in TFE Requests [or Material Change Reports](#) being approved, ~~or disapproved and rejected~~; and
  - (v) whether NERC has developed or is in a position to develop a uniform framework for Regional Entities to use to appraise the reliability benefits of Strict Compliance when making determinations based on the criteria in Section 3.1(iv) and (vi).

The first such informational report shall cover the period through June 30, 2011, and shall be filed with FERC and other Applicable Governmental Entities no later than September 28, 2011. Subsequent annual informational reports shall cover the period from July 1 through June 30 and shall be filed within 90 days following the end of the period covered by the report.

If NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an informational report in order to satisfy the information requirements specified above, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the informational report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance

#### Appendix 4D - Technical Feasibility Exception Procedure

with their procedures for receiving confidential, proprietary and other protected information.

### **12.0 CONFIDENTIALITY OF TFE REQUESTS, MATERIAL CHANGE REPORTS AND RELATED INFORMATION**

Except as expressly stated in this Section 12.0, the submission, review, ~~acceptance/rejection~~, and approval/disapproval of TFE Requests or Material Change Reports, and the implementation and termination of approved TFEs, shall be maintained as confidential. The following Documents are Confidential Information and shall be treated as such in accordance with Section 1500 of the NERC *Rules of Procedure*:

- (i) All TFE Requests and ~~proposed~~ amendments, ~~including without limiting the foregoing the Required Part A Information and Required Part B Information or Material Change Reports~~ submitted, filed or made available by the Responsible Entity;
- (ii) All notices issued by a Regional Entity or NERC pursuant to this Appendix;
- (iii) All requests for Documents or information made by a Regional Entity or NERC pursuant to this Appendix;
- (iv) All submissions of Documents and information by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;
- (v) All post-approval reports submitted by a Responsible Entity pursuant to this Appendix;
- (vi) All correspondence, notes, drawings, drafts, work papers, electronic communications, reports and other Documents generated by a Regional Entity or NERC in connection with a TFE Request or Material Change Report, including (without limiting the scope of this provision) in connection with reviewing a TFE Request or Material Change Report and supporting Documents and information submitted, filed or made available by the Responsible Entity, conducting a physical inspection of the Covered Asset(s) or the related Facility(ies), reviewing and analyzing post-approval reports submitted by a Responsible Entity, or conducting compliance monitoring processes pursuant to the CMEP with respect to a TFE Request or Material Change Report or approved TFE.
- (vii) All guidance issued to Regional Entities pursuant to Section 11.2 by NERC or by the committee described in Section 11.2(3), and all minutes of meetings of the committee and discussions between or among its members.
- (viii) All submissions by Responsible Entities to NERC pursuant to Section 5.2.8.
- (ix) All requests for reconsideration pursuant to Section 5.2.9.

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- (x) Any confidential appendix to an informational report prepared and submitted pursuant to Section 11.2(4) or to an Annual Report prepared and submitted pursuant to Section 13.0.

**13.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES**

**13.1. Contents of Annual Report**

NERC shall submit an Annual Report to FERC that provides a Wide-Area analysis or analyses, which NERC shall prepare in consultation with the Regional Entities, regarding the use of TFEs and the impact on the reliability of the Bulk Electric System, as required by Paragraphs 220 and 221 of *Order No. 706*, which state:

. . . [W]e direct the ERO to submit an annual report to the Commission that provides a wide-area analysis regarding use of the technical feasibility exception and the effect on Bulk-Power System reliability. The annual report must address, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception. . . [T]he report should contain aggregated data with sufficient detail for the Commission to understand the frequency with which specific provisions are being invoked as well as high level data regarding mitigation and remediation plans over time and by region . . .

Copies of the Annual Report shall be filed with other Applicable Governmental Authorities. The Annual Report shall contain, at a minimum, the following information:

- (i) The frequency of use of the TFE Request process, disaggregated by Regional Entity and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, including (A) the numbers of TFE Requests that have been submitted, ~~accepted/rejected~~, and approved/disapproved during the preceding year and cumulatively since the effective date of this Appendix, (B) the numbers of unique Covered Assets for which TFEs have been approved, (C) the numbers of approved TFEs that are still in effect as of on or about the date of the Annual Report; (D) the numbers of approved TFEs that reached their Expiration Dates or were terminated during the preceding year; and (E) the numbers of approved TFEs that are scheduled to reach their Expiration Dates during the ensuing year;
- (ii) Categorization of the submitted and approved TFE Requests to date by broad categories such as the general nature of the TFE Request, the Applicable Requirements covered by submitted and approved TFE Requests, and the types of Covered Assets that are the subject of submitted and approved TFE Requests;

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(iii) Categorization of the circumstances or justifications on which the approved TFEs to date were submitted and approved, by broad categories such as the need to avoid replacing existing equipment with significant remaining useful lives, unavailability of suitable equipment to achieve Strict Compliance in a timely manner, or conflicts with other statutes and regulations applicable to the Responsible Entity;

(iv) Categorization of the compensating measures and mitigating measures implemented and maintained by Responsible Entities pursuant to approved TFEs, by broad categories of compensating measures and mitigating measures and by types of Covered Assets;

(v) For each TFE Request that was ~~rejected or~~ disapproved, and for each TFE that was terminated, but for which, due to exceptional circumstances as determined by the Regional Entity, the Effective Date was later than the latest date specified in Section ~~5.1.5~~, 5.2.6, or 9.3, as applicable, a statement of the number of days the Responsible Entity was not subject to imposition of findings of violations of the Applicable Requirement or imposition of Penalties or sanctions pursuant to Section 5.3.

(vi) A discussion, on an aggregated basis, of Compliance Audit results and findings concerning the implementation and maintenance of compensating measures and mitigating measures, and the implementation of steps and the conduct of research and analyses to achieve Strict Compliance with the Applicable Requirements, by Responsible Entities in accordance with approved TFEs;

(vii) Assessments, by Regional Entity (and for more discrete areas within a Regional Entity, if appropriate) and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, of the Wide-Area impacts on the reliability of the Bulk Electric System of approved TFEs in the aggregate, including the compensating measures and mitigating measures that have been implemented; ~~and~~

(viii) Discussion of efforts to eliminate future reliance on TFEs;

(ix) Data and information regarding Material Change Reports, including the number of Material Change Reports filed annually and information regarding the types of circumstances or events that led to Material Changes, as well as any additional information NERC believes would be useful; and

(x) Additional information about TFEs and their expiration dates, including the number of TFEs by expiration year and CIP Standard requirement, the percentage of currently approved TFEs without expiration dates, and the number of new TFEs approved without expiration dates annually.

### ~~13.2. [Deleted] Submission of Quarterly Reports by Regional Entities to NERC~~

~~In order to facilitate timely preparation of the Annual Report, each Regional Entity shall submit to NERC, within thirty (30) calendar days following the end of each calendar quarter, a report listing (i) the types of Covered Assets with respect to which TFE~~

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~~Requests were approved during such quarter, and (ii) final totals for the quarter of TFE Requests accepted and rejected and TFE Requests approved and disapproved. The reports submitted by the Regional Entities to NERC shall be Confidential Information.~~

### **13.3. Due Date for Annual Reports**

The first Annual Report shall cover the period through June 30, 2011, and shall be filed with FERC and with other Applicable Governmental Authorities no later than 90 days after the end of such calendar quarter. Subsequent Annual Reports shall be filed at one year intervals thereafter.

### **13.4. Annual Report to be a Public Document; Confidential Appendix**

It is the intent of this Appendix that the Annual Report be a public document. Therefore, NERC shall prepare the annual report in such a manner that it does not include or disclose any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information. However, if NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an Annual Report in order to satisfy the information requirements specified in this Appendix or required by FERC or other Applicable Governmental Authorities, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the Annual Report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance with their procedures for receiving confidential, proprietary and other protected information.

### **13.5. Responsible Entities Must Cooperate in Preparation of Annual Report**

As specified in Paragraph 220, note 74 of Order No. 706, Responsible Entities must cooperate with NERC and Regional Entities in providing information deemed necessary for NERC to fulfill its reporting obligations to FERC.

**ATTACHMENT 2A**

**NERC Rules of Procedure Appendix 2**

***Definitions Used in the Rules of Procedure***

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## **NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

### **DEFINITIONS USED IN THE RULES OF PROCEDURE**

#### **APPENDIX 2 TO THE RULES OF PROCEDURE**

**Effective: [DATE]  
(except as noted below)**

New or revised definitions marked with # will become effective as defined terms on July 1, 2013 in accordance with the Bulk Electric System Order (Order No. 773).



## General

For purposes of the NERC Rules of Procedure, including all Appendices, the terms defined in this Appendix shall have the meanings set forth herein. For convenience of reference to the user, definitions of terms that are used in a particular Appendix may be repeated in that Appendix.

Where used in the Rules of Procedure, a defined term will be capitalized. Where a term defined in this Appendix appears in the Rules of Procedure but is not capitalized, the term is there being used in its ordinary and commonly understood meaning and not as defined in this Appendix (if different). Other terms that are not defined terms, such as the names of entities, organizations, committees, or programs; position titles; titles of documents or forms; section headings; geographic locations; and other terms commonly presented as proper nouns, may also be capitalized in the Rules of Procedure without being defined in this Appendix.

Definitions of terms in this Appendix that are marked with asterisks (\*\*) are taken from the NERC *Glossary of Terms Used in Reliability Standards*. Definitions of terms in this Appendix that are marked with “pluses” (++) are taken from Section 215 of the Federal Power Act or the Commission’s regulations at 18 C.F.R. Part 39 or Part 388.

Other terms used in the Rules of Procedure but not defined in this Appendix that have commonly understood and used technical meanings in the electric power industry, including applicable codes and standards, shall be construed in accordance with such commonly understood and used technical meanings.

## Specific Definitions

#“Acceptance of the Exception Request” or “Acceptance” means the determination that an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) contains all the Required Information so that it can undergo substantive review.

“Adjacent Balancing Authority” means a Balancing Authority Area that is interconnected to another Balancing Authority Area either directly or via a multi-party agreement or transmission tariff.\*\*

“Adjusted Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as determined based on application of the adjustment factors identified in Section 4.3 of the *Sanction Guidelines* to the Base Penalty Amount.

“Advisories” or “Level 1 (Advisories)” is a notification issued by NERC in accordance with Section 810.3.1 of the Rules of Procedure.

“Alleged Violation” means a Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard.

“Annual Audit Plan” means a plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited and the schedule of Compliance Audits for the calendar year.

“Annual Report” means the annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 13.0 of Appendix 4D.

“Applicable Governmental Authority” means the FERC within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.

“Applicable Requirement” means a Requirement of a CIP Standard that (i) expressly provides either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement; or (ii) is subject to Appendix 4D by FERC directive.

#“Approval of the Exception Request” or “Approval” means the determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

#“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.\*\*

#“Balancing Authority Area” means the collection of generation, transmission, and Loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains Load-resource balance within this area.\*\*

“Base Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as initially determined pursuant to Sections 4.1 and 4.2 of the NERC *Sanction Guidelines*, before application of any adjustment factors.

#“BES Definition” means the NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

#“Blackstart Resource” means a generating unit(s) and its associated set of equipment which has the ability to be started without support from the System or is designed to remain energized without connection to the remainder of the System, with the ability to energize a bus, meeting the Transmission Operator’s restoration plan needs for Real and Reactive Power capability, frequency and voltage control, and that has been included in the Transmission Operator’s restoration plan.\*\*

“Board” or “Board of Trustees” means the Board of Trustees of NERC.

“Board of Trustees Compliance Committee,” “BOTCC” or “Compliance Committee” means the Compliance Committee of the NERC Board of Trustees.

#“Bulk Electric System” or “BES” means unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

**Inclusions:**

- **I1** - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.
- **I2** - Generating resource(s) with gross individual nameplate rating greater than 20 MVA or gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- **I3** - Blackstart Resources identified in the Transmission Operator’s restoration plan.
- **I4** - Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.
- **I5** –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1.

**Exclusions:**

- **E1** - Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
  - a) Only serves Load. Or,
  - b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,
  - c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.

- **E2** - A generating unit or multiple generating units on the customer’s side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity

provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.

- **E3** - Local networks (LN): A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:
  - a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
  - b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and
  - c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).
- **E4** – Reactive Power devices owned and operated by the retail customer solely for its own use.

Note - Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.\*\*

“Bulk Power System” means, depending on the context: (i) Facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy [++]. (ii) Solely for purposes of Appendix 4E, Bulk Electric System.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative(s) irrespective of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

#“Canadian Entity” means a Registered Entity (or, solely for purposes of Appendix 4D, a Responsible Entity) that is organized under Canadian federal or provincial law.

“Cascading” means the uncontrolled successive loss of System Elements triggered by an incident at any location. Cascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area predetermined by studies.\*\*

“CCC” means the NERC Compliance and Certification Committee.

“Certification” means, depending on the context, (i) the process undertaken by NERC and a Regional Entity to verify that an entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator and/or Reliability Coordinator; such Certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure; or (ii) for purposes of Section 600 of the Rules of Procedure, an official recognition that indicates the recipient has passed a NERC exam or completed a specified number of Continuing Education Hours.

“Certification Staff” means individuals employed or contracted by NERC who have the authority to make initial determinations of Certification of entities performing reliability functions.

“Certification Team” means a team assembled by a Regional Entity that will be responsible for performing the activities included in the Certification process for an entity pursuant to Appendix 5A.

“Classified National Security Information” means Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

“Clerk” means an individual assigned by the Compliance Enforcement Authority to perform administrative tasks relating to the conduct of hearings as described in Attachment 2, Hearing Procedures, to Appendix 4C.

“Commission” means the Federal Energy Regulatory Commission or FERC.

“Complaint” means an allegation that a Registered Entity violated a Reliability Standard.

“Compliance and Certification Manager” means individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities with applicable NERC Reliability Standards.

“Compliance Audit” means a systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the Requirements of applicable Reliability Standards.

“Compliance Audit Participants” means Registered Entities scheduled to be audited and the audit team members.

“Compliance Enforcement Authority” means NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

“Compliance Enforcement Authority’s Area of Responsibility” means the Compliance Enforcement Authority’s Region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s Area of Responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

“Compliance Investigation” means a comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

“Compliance Monitoring and Enforcement Program” or “CMEP” means, depending on the context (1) the NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the NERC Rules of Procedure) or the Commission-approved program of a Regional Entity, as applicable, or (2) the program, department or organization within NERC or a Regional Entity that is responsible for performing compliance monitoring and enforcement activities with respect to Registered Entities’ compliance with Reliability Standards.

“Compliant Date” means the date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

“Confidential Business and Market Information” means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.

“Confidential Information” means (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) for purposes of Appendix 4D, any other information that is designated as Confidential Information in Section 11.0 of Appendix 4D.

“Confirmed Violation” means an Alleged Violation for which (1) the Registered Entity has accepted or not contested the Notice of Alleged Violation and Penalty or Sanction or other notification of the Alleged Violation, or (2) there has been the issuance of a final order from NERC or a Regional Entity Hearing Body finding a violation, Penalty or sanction, or (3) the period for requesting a hearing or an appeal has expired, or (4) the Registered Entity has executed a settlement agreement pursuant to Section 5.6.

“Continuing Education Hour” or “CE Hour” means based on sixty clock minutes, and includes at least fifty minutes of participation in a group or self-study learning activity that meets the criteria of the NERC Continuing Education Program.

“Continuing Education Program Provider” or “Provider” means the individual or organization offering a learning activity to participants and maintaining documentation required by Section 600 of the Rules of Procedure.

“Coordinated Functional Registration” means where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more Reliability Standard(s) applicable to a particular function, and/or for one or more Requirement(s)/sub-Requirement(s) within particular Reliability Standard(s).

“Covered Asset” means a Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

“Credential” means a NERC designation that indicates the level of qualification achieved (i.e., reliability operator; balancing, interchange, and transmission operator; balancing and interchange operator; and transmission operator).

“Critical Assets” means Facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System.\*\*

“Critical Cyber Assets” means Cyber Assets critical to the reliable operation of Critical Assets.\*\*

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing Critical Infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on Critical Infrastructure; and (iii) does not simply give the location of the Critical Infrastructure.++

“Critical Infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.++

“Critical Infrastructure Protection Standard” or “CIP Standard” means any of NERC Reliability Standards CIP-002 through CIP-009.

“Cross-Border Regional Entity” means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.++

“Cyber Assets” means programmable electronic devices and communication networks including hardware, software, and data.\*\*

“Cyber Security Incident” means any malicious or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk Power System.++

“Cyber Security Incident Information” means any information related to, describing, or which could be used to plan or cause a Cyber Security Incident.

“Days”, as used in Appendix 5A with respect to the Registration and Certification processes, means calendar days.

“Delegate” means a person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

“Director of Compliance” means the Director of Compliance of NERC or of the Compliance Enforcement Authority, as applicable, or other individual designated by the Compliance Enforcement Authority who is responsible for the management and supervision of Compliance Staff, or his or her designee.

#“Disapproval of the Exception Request” or “Disapproval” means the determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

#“Distribution Factor” means the portion of an Interchange Transaction, typically expressed in per unit that flows across a transmission facility (Flowgate).\*\*

“Distribution Provider” means the entity that provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.\*\*

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“Effective Date” means the date, as specified in a notice disapproving a TFE Request or terminating an approved TFE, on which the disapproval or termination becomes effective.

“Electric Reliability Organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System in the United States, subject to Commission review. The organization may also have received recognition by Applicable Governmental Authorities in Canada and Mexico to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries.



“Element” means any electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line. An Element may be comprised of one or more components.\*\*

“Eligible Reviewer” means a person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

“End Date” means the last date of the period to be covered in a Compliance Audit.

“Essential Actions” or “Level 3 (Essential Actions)” is a notification issued by NERC in accordance with Section 810.3.3 of the Rules of Procedure.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

#“Exception” means either an Inclusion Exception or an Exclusion Exception.

#“Exception Procedure” means the procedure set forth in Appendix 5C.

“Exception Report” means information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a System Operating Limit has been exceeded) or enabling the Compliance Enforcement Authority to ascertain the Registered Entity’s compliance.

#“Exception Request” means a request made by a Submitting Entity in accordance with Appendix 5C for an Exception.

#“Exception Request Form” means the form adopted by each Regional Entity, in accordance with a template provided by NERC, for use by Submitting Entities in submitting Exception Requests; provided, that the Exception Request Form must include Section III.B as adopted by NERC.

“Exclusion Exception” means a determination that an Element that falls within the BES Definition should be excluded from the BES.

“Expiration Date” means the date on which an approved TFE expires.

“Facility” means a set of electrical equipment that operates as a single Bulk Electric System Element (e.g., a line, a generator, a shunt compensator, transformer, etc.)\*\*

“FERC” means the United States Federal Energy Regulatory Commission.

“Final Penalty Amount” means the final, proposed Penalty for violation of a Reliability Standard, determined in accordance with the *Sanction Guidelines*.

#“Flowgate” means 1.) A portion of the transmission system through which the Interchange Distribution Calculator calculates the power flow from Interchange Transactions. 2.) A mathematical construct, comprised of one or more monitored transmission Facilities and optionally one or more contingency Facilities, used to analyze the impact of power flows upon the Bulk Electric System.\*\*

“FOIA” means the U.S. Freedom of Information Act, 5 U.S.C. §552.

“Footprint” means the geographical or electric area served by an entity.

“Functional Entity” means an entity responsible for a function that is required to ensure the Reliable Operation of the electric grid as identified in the NERC Reliability Standards.

“Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.\*\*

“Generator Owner” means an entity that owns and maintains generating units.\*\*

“Hearing Body” or “Regional Entity Hearing Body” means the body established or designated by the Compliance Enforcement Authority to conduct hearings and issue decisions concerning disputed compliance matters in accordance with Attachment 2, Hearing Procedures, of Appendix 4C.

“Hearing Officer” means, depending on the context, (i) an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to Attachment 2, Hearing Procedures, of Appendix 4C, or (ii) solely for hearings conducted pursuant to Appendix 4E, (A) a CCC member or (B) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to the Hearing Procedures in Appendix E; the Hearing Officer shall not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Appendix 4E.

“Hearing Procedures” means, depending on the context, (i) Attachment 2 to the NERC or a Regional Entity CMEP, as applicable, or (ii) the hearing procedures of the NERC Compliance and Certification Committee in Appendix 4E.

#“Inclusion Exception” means a determination that an Element that falls outside the BES Definition should be included in the BES.

“Interchange” means energy transfers that cross Balancing Authority boundaries.\*\*

“Interchange Authority” means the responsible entity that authorizes the implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communications of Interchange information for reliability assessment purposes.\*\*

#“Interchange Distribution Calculator” means the mechanism used by Reliability Coordinators in the Eastern Interconnection to calculate the distribution of Interchange Transactions over specific Flowgates. It includes a database of all Interchange Transactions and a matrix of the Distribution Factors for the Eastern Interconnection.\*\*

“Interchange Schedule” means an agreed-upon Interchange Transaction size (megawatts), start and end time, beginning and ending ramp times and rate, and type required for delivery and receipt of power and energy between the Source and Sink Balancing Authorities involved in the transaction.\*\*

“Interchange Transaction” means an agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.\*\*

“Interconnected Operations Service” means a service (exclusive of basic energy and Transmission Services) that is required to support the Reliable Operation of interconnected Bulk Electric Systems.\*\*

“Interconnection” means a geographic area in which the operation of Bulk Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the Facilities within their control.++

“Interconnection Reliability Operating Limit” means a System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading outages that adversely impact the reliability of the Bulk Electric System.\*\*

“Interpretation” means an addendum to a Reliability Standard, developed in accordance with the NERC *Standard Processes Manual* and approved by the Applicable Governmental Authority(ies), that provides additional clarity about one or more Requirements in the Reliability Standard.

“ISO/RTO” means an independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.

“Joint Registration Organization” means an entity that registers in the Compliance Registry to perform reliability functions for itself and on behalf of one or more of its members or related entities for which such members or related entities would otherwise be required to register.

#“Lead Entity” means the entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

“Lead Mediator” means a member of a mediation team formed pursuant to Appendix 4E who is selected by the members to coordinate the mediation process and serve as the mediation team’s primary contact with the Parties.

#“Load” means an end-user device or customer that receives power from the electric system.\*\*

“Load-Serving Entity” means an entity that secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.\*\*

“Mapping” means the process of determining whether a Regional Entity’s Footprint is being served by Registered Entities.

“Material Change” means a change in facts that modifies Required Information in connection with an approved TFE. Examples of a Material Change could include, but are not limited to an increase in device count (but not a decrease), change in compensating measures, change in statement of basis for approval for the TFE, a change in the Expiration Date of the TFE, or a Responsible Entity achieving Strict Compliance with the Applicable Requirement.

“Material Change Report” means a report submitted by the Responsible Entity to the Regional Entity in the event there is a Material Change to the facts underlying an approved TFE pursuant to Section 4.0 of Appendix 4D.

“Mediation Settlement Agreement” means a written agreement entered into by the Parties to a mediation pursuant to Appendix 4E that resolves the dispute.

“Member” means a member of NERC pursuant to Article II of its Bylaws.

“Member Representatives Committee” or “MRC” means the body established pursuant to Article VIII of the NERC Bylaws.

#“Mexican Entity” means a Registered Entity that is organized under Mexican law.

“Mitigating Activities” means actions taken by a Registered Entity to correct and prevent recurrence of a noncompliance, whether or not the actions are embodied in a Mitigation Plan.

“Mitigation Plan” means an action plan developed by the Registered Entity to (1) correct a violation of a Reliability Standard and (2) prevent re-occurrence of the violation.

“NERC-Approved Learning Activity” means training that maintains or improves professional competence and has been approved by NERC for use in its Continuing Education Program.

“NERC Compliance Monitoring and Enforcement Program Implementation Plan” or “NERC Implementation Plan” means the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting by Registered Entities to the Compliance Enforcement Authority in order to verify compliance

and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.

“NERC Compliance Registry,” “Compliance Registry” or “NCR” means a list, maintained by NERC pursuant to Section 500 of the NERC Rules of Procedure and Appendix 5B, the NERC *Statement of Compliance Registry Criteria*, of the owners, operators and users of the Bulk Power System, and the entities registered as their designees, that perform one or more functions in support of reliability of the Bulk Power System and are required to comply with one or more Requirements of Reliability Standards.

“NERC Identification Number” or “NERC ID” means a number given to NERC Registered Entities that will be used to identify the entity for certain NERC activities. Corporate entities may have multiple NERC IDs to show different corporate involvement in NERC activities.

“NERC Organization Certification” or “Organization Certification” means the process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator; such certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Notice of Alleged Violation and Proposed Penalty or Sanction” means a notice issued by the Compliance Enforcement Authority to a Registered Entity pursuant to Section 5.3 of Appendix 4C.

“Notice of Completion of Enforcement Action” means a notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10 of Appendix 4C, stating that an enforcement action is closed.

“Notice of Confirmed Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards.

“Notice of Penalty” means a notice prepared by NERC and filed with FERC, following approval by NERC of a Notice or other notification of Confirmed Violation or a settlement agreement, stating the Penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement.

“Notice of Possible Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a Possible Violation has been identified, (2) provides a brief description of the Possible Violation, including the Reliability Standard Requirement(s) and the date(s) involved, and (3) instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

“NRC” means the United States Nuclear Regulatory Commission.

“NRC Safeguards Information” means Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21-73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

“Open Access Transmission Tariff” means an electronic transmission tariff accepted by the U.S. Federal Energy Regulatory Commission requiring the Transmission Service Provider to furnish to all shippers with non-discriminating service comparable to that provided by Transmission Owners to themselves.\*\*

#“Owner” means the owner(s) of an Element or Elements that is or may be determined to be part of the BES as a result of either the application of the BES Definition or an Exception, or another entity, such as an operator, authorized to act on behalf of the owner of the Element or Elements in the context of an Exception Request.

“Participant” means a Respondent and any other Person who is allowed or required by the Hearing Body or by FERC to participate as an intervenor in a proceeding conducted pursuant to the Hearing Procedures, and as used in the Hearing Procedures shall include, depending on the context, the members of the Compliance Staff that participate in a proceeding or the members of the Certification Staff that participate in a proceeding pursuant to Appendix 4E.

“Party” or “Parties” means a Person or the Persons participating in a mediation pursuant to Appendix 4E.

“Penalty” means and includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity or Respondent to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s or Respondent’s violation and take into consideration any timely efforts made by the Registered Entity or Respondent to remedy the violation.

“Periodic Data Submittals” means modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Planning Authority” means the responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.\*\*

“Point of Delivery” means a location that a Transmission Service Provider specifies on its transmission system where an Interchange Transaction leaves or a Load-Serving Entity receives its energy.\*\*

“Point of Receipt” means a location that the Transmission Service Provider specifies on its transmission system where an Interchange Transaction enters or a generator delivers its output.

“Possible Violation” means the identification, by the Compliance Enforcement Authority, of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity.

“Preliminary Screen” means an initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists, and consisting of an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered, and (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed.

“Probation” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure during which the certificate is still valid. During the probationary period, a subsequent offense of misconduct, as determined through the same process as described above, may be cause for more serious consequences.

“Protected FOIA Information” means Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)), under any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

“Protection System” means protective relays which respond to electrical quantities, communications systems necessary for correct operation of protective functions, voltage and current sensing devices providing inputs to protective relays, station dc supply associated with protective functions (including batteries, battery chargers, and non-battery-based dc supply), and control circuitry associated with protective functions through the trip coil(s) of the circuit breakers or other interrupting devices.\*\*

“Purchasing-Selling Entity” means the entity that purchases, or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.\*\*

#“Reactive Power” means the portion of electricity that establishes and sustains the electric and magnetic fields of alternating-current equipment. Reactive Power must be supplied to most types of magnetic equipment, such as motors and transformers. It also must supply the reactive losses on transmission facilities. Reactive Power is provided by generators, synchronous

condensers, or electrostatic equipment such as capacitors and directly influences electric system voltage. It is usually expressed in kilovars (kvar) or megavars (Mvar).\*\*

#“Real Power” means the portion of electricity that supplies energy to the Load.\*\*

“Receiving Entity” means NERC or a Regional Entity receiving Confidential Information from an owner, operator, or user of the Bulk Power System or from any other party.

#“Recommendation” for purposes of Appendix 5C means the report to NERC containing the evaluation prepared in accordance with section 5.2 of Appendix 5C concerning whether or to what extent an Exception Request should be approved.

“Recommendations” or “Level 2 (Recommendations)” is a notification issued by NERC in accordance with Section 810.3.2 of the Rules of Procedure.

“Region” means the geographic area, as specified in a Regional Entity’s delegation agreement with NERC, within which the Regional Entity is responsible for performing delegated functions.

“Regional Criteria” means reliability requirements developed by a Regional Entity that are necessary to implement, to augment, or to comply with Reliability Standards, but which are not Reliability Standards. Such Regional Criteria may be necessary to account for physical differences in the Bulk Power System but are not inconsistent with Reliability Standards nor do they result in lesser reliability. Such Regional Criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional Criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional Entity” means an entity having enforcement authority pursuant to 18 C.F.R. § 39.8.++

“Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan” or “Regional Implementation Plan” means an annual plan, submitted by on or about October 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity’s Annual Audit Plan.

“Regional Reliability Standard” means a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Applicable Governmental Authority(ies), shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities



pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Registered Ballot Body” means that aggregation of all entities or individuals that qualify for one of the Segments approved by the Board of Trustees, and are registered with NERC as potential ballot participants in the voting on proposed Reliability Standards.

“Registered Entity” means an owner, operator, or user of the Bulk Power System, or the entity registered as its designee for the purpose of compliance, that is included in the NERC Compliance Registry.

“Registration” or “Organization Registration” means the processes undertaken by NERC and Regional Entities to identify which entities are responsible for reliability functions within the Regional Entity’s Region.

#“Rejection of the Exception Request” or “Rejection” means the determination that an Exception Request is not an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) or does not contain all the Required Information in accordance with section 4.5 of Appendix 5C in order to be reviewed for substance.

“Reliability Coordinator” means the entity that is the highest level of authority who is responsible for the Reliable Operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator’s vision.\*\*

“Reliability Coordinator Area” means the collection of generation, transmission and loads within the boundaries of the Reliability Coordinator. Its boundary coincides with one or more Balancing Authority Areas.\*\*

“Reliability Standard” means a requirement to provide for Reliable Operation of the Bulk Power System, including without limiting the foregoing, requirements for the operation of existing Bulk Power System Facilities, including cyber security protection, and including the design of planned additions or modifications to such Facilities to the extent necessary for Reliable Operation of the Bulk Power System, but the term does not include any requirement to enlarge Bulk Power System Facilities or to construct new transmission capacity or generation capacity. A Reliability Standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the Applicable Governmental Authority.

“Reliability Standards Development Plan” means the forward-looking plan developed by NERC on an annual basis setting forth the Reliability Standards development projects that are scheduled to be worked on during the ensuing three-year period, as specified in Section 310 of the Rules of Procedure.

“Reliable Operation” means operating the Elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or Cascading failures of such system will not occur as a result of a sudden disturbance, including a Cyber Security Incident, or unanticipated failure of system Elements.++

“Remedial Action Directive” means an action (other than a Penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.

“Reporting Entity” means an entity required to provide data or information requested by NERC or a Regional Entity in a request for data or information pursuant to Section 1600 of the Rules of Procedure.

“Requirement” means an explicit statement in a Reliability Standard that identifies the functional entity responsible, the action or outcome that must be achieved, any conditions achieving the action or outcome, and the reliability-related benefit of the action or outcome. Each Requirement shall be a statement with which compliance is mandatory.

“Required Date” means the date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required.

#“Required Information” means, as applicable, either (i) the information required to be provided in a TFE Request, as specified in Section 4.0 of Appendix 4D; or (ii) the information required to be provided in an Exception Request, as specified in section 4.0 of Appendix 5C.

“Reserve Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority’s use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g. ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.\*\*

“Resource Planner” means the entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority area.\*\*

“Respondent” means, depending on the context, the Registered Entity, who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable, or the Registered Entity that is the subject of the Certification decision that is the basis for a proceeding under Appendix 4E.

“Responsible Entity” means an entity that is registered for a reliability function in the NERC Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the “Applicability” section of the CIP Standard.

“Revoked” means a NERC certificate that has been suspended for more than twelve months. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified. The certificate holder will be required to pass an exam to be certified again. Any CE Hours accumulated prior to or during the revocation period will not be counted towards Credential Maintenance.

“Revoke for Cause” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure during which the certificate is no longer valid and requiring successfully passing an exam to become certified. However, an exam will not be authorized until the revocation period expires. CE Hours earned before or during this revocation period will not be counted for maintaining a Credential.

#“Scope of Responsibility” means the registered functions of a Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority and the geographical or electric region in which the Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

#“Section I Required Information” means Required Information that is to be provided in Section I of a Submitting Entity’s Exception Request.

#“Section II Required Information” means Required Information that is to be provided in Section II of a Submitting Entity’s Exception Request.

#“Section III Required Information” means Required Information that is to be provided in Section III of a Submitting Entity’s Exception Request.

“Sector” means a group of Members of NERC that are Bulk Power System owners, operators, or users or other persons and entities with substantially similar interests, including governmental entities, as pertinent to the purposes and operations of NERC and the operation of the Bulk Power System, as defined in Article II, Section 4 of the NERC Bylaws. Each Sector shall constitute a class of Members for purposes of the New Jersey Nonprofit Corporation Act.

“Segment” means one of the subsets of the Registered Ballot Body whose members meet the qualification criteria for the subset.

“Self-Certification” means an attestation by a Registered Entity that it is compliant or non-compliant with a Reliability Standard Requirement that is the subject of the Self-Certification, or that it does not own Facilities that are subject to the Reliability Standard Requirement, or that the Reliability Standard Requirement is not applicable to the Registered Entity.

“Self-Report” means a report by a Registered Entity stating that the Registered Entity believes it has, or may have, violated a Reliability Standard.

“Senior Manager” means the person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity’s implementation of, and adherence to, the CIP Standards.

#“Sink Balancing Authority” means the Balancing Authority in which the Load (sink) is located for an Interchange Transaction.\*\*

“Source Balancing Authority” means the Balancing Authority in which the generation (source) is located for an Interchange Transaction.\*\*

#“Special Protection System” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than and/or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows. A Special Protection System does not include (a) underfrequency or undervoltage Load shedding or (b) fault conditions that must be isolated, or (c) out-of-step relaying (not designed as an integral part of a Special Protection System).\*\*

“Spot Check” means a process in which the Compliance Enforcement Authority requests a Registered Entity to provide information (1) to support the Registered Entity’s Self-Certification, Self-Report, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards, or (2) as a random check, or (3) in response to operating problems or system events.

“Staff” or “Compliance Staff” means individuals employed or contracted by NERC or the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Strict Compliance” means compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

#“Submitting Entity” means (i) an owner, operator, or user of the Bulk Power System or any other party that submits information to NERC or a Regional Entity that it reasonably believes contains Confidential Information or, (ii) solely for purposes of Appendix 5C, the entity that submits an Exception Request in accordance with section 4.0 of Appendix 5C.

“Suspended” means certificate status due to an insufficient number of CE Hours being submitted prior to the expiration of a certificate. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified.

“System” means a combination of generation, transmission and distribution components.\*\*

“System Operating Limit” means the value (such as MW, Mvar, amperes, frequency or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria.\*\*

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies NERC’s or the Compliance Enforcement Authority’s (as applicable) conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the Hearing Body or Hearing Panel.

“Technical Feasibility Exception” or “TFE” means an exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in section 3.0 of Appendix 4D.

#“Technical Review Panel” means a panel established pursuant to section 5.3 of Appendix 5C.

“Termination of Credential” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure whereby a Credential is permanently Revoked.

“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.

“TFE Request” means a request submitted by a Responsible Entity in accordance with Appendix 4D for an exception from Strict Compliance with an Applicable Requirement.

“Transmission Customer” means 1. any eligible customer (or its designated agent) that can or does execute a Transmission Service agreement or can and does receive Transmission Service. 2. Any of the following responsible entities: Generator Owner, Load-Serving Entity, or Purchasing-Selling Entity.\*\*

“Transmission Operator” means the entity responsible for the reliability of its “local” transmission system, and that operates or directs the operations of the transmission Facilities.\*\*

“Transmission Owner” means the entity that owns and maintains transmission Facilities.\*\*

“Transmission Planner” means the entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.\*\*

“Transmission Service” means services provided to the Transmission Customer by the Transmission Service Provider to move energy from a Point of Receipt to a Point of Delivery.\*\*

“Transmission Service Provider” means the entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.\*\*

“Variance” means an aspect or element of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities, or to a particular entity or class of entities. A Variance allows an alternative approach to meeting the same reliability objective as the Reliability Standard, and is typically necessitated by a physical difference. A Variance is embodied within a Reliability Standard and as such, if adopted by NERC and approved by the Applicable Governmental Authority(ies), shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Violation Risk Factor” or “VRF” means a factor (lower, medium or high) assigned to each Requirement of a Reliability Standard to identify the potential reliability significance of noncompliance with the Requirement.

“Violation Severity Level” or “VSL” means a measure (lower, moderate, high or severe) of the degree to which compliance with a Requirement was not achieved.

“Wide Area” means the entire Reliability Coordinator Area as well as the critical flow and status information from adjacent Reliability Coordinator Areas as determined by detailed system studies to allow the calculation of Interconnected Reliability Operating Limits.\*\*

**ATTACHMENT 2B**

**NERC Rules of Procedure Appendix 2**

***Definitions Used in the Rules of Procedure***

**Redlined Version**



## **NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

### **DEFINITIONS USED IN THE RULES OF PROCEDURE**

#### **APPENDIX 2 TO THE RULES OF PROCEDURE**

**Effective: ~~March 5, 2013~~[DATE]**  
**(except as noted below)**

New or revised definitions marked with # will become effective as defined terms on July 1, 2013 in accordance with the Bulk Electric System Order (Order No. 773).



## General

For purposes of the NERC Rules of Procedure, including all Appendices, the terms defined in this Appendix shall have the meanings set forth herein. For convenience of reference to the user, definitions of terms that are used in a particular Appendix may be repeated in that Appendix.

Where used in the Rules of Procedure, a defined term will be capitalized. Where a term defined in this Appendix appears in the Rules of Procedure but is not capitalized, the term is there being used in its ordinary and commonly understood meaning and not as defined in this Appendix (if different). Other terms that are not defined terms, such as the names of entities, organizations, committees, or programs; position titles; titles of documents or forms; section headings; geographic locations; and other terms commonly presented as proper nouns, may also be capitalized in the Rules of Procedure without being defined in this Appendix.

Definitions of terms in this Appendix that are marked with asterisks (\*\*) are taken from the NERC *Glossary of Terms Used in Reliability Standards*. Definitions of terms in this Appendix that are marked with “pluses” (++) are taken from Section 215 of the Federal Power Act or the Commission’s regulations at 18 C.F.R. Part 39 or Part 388.

Other terms used in the Rules of Procedure but not defined in this Appendix that have commonly understood and used technical meanings in the electric power industry, including applicable codes and standards, shall be construed in accordance with such commonly understood and used technical meanings.

## Specific Definitions

#“Acceptance of the Exception Request” or “Acceptance” means the determination that an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) contains all the Required Information so that it can undergo substantive review.

“Adjacent Balancing Authority” means a Balancing Authority Area that is interconnected to another Balancing Authority Area either directly or via a multi-party agreement or transmission tariff.\*\*

“Adjusted Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as determined based on application of the adjustment factors identified in Section 4.3 of the *Sanction Guidelines* to the Base Penalty Amount.

“Advisories” or “Level 1 (Advisories)” is a notification issued by NERC in accordance with Section 810.3.1 of the Rules of Procedure.

“Alleged Violation” means a Possible Violation for which the Compliance Enforcement Authority has determined, based on an assessment of the facts and circumstances surrounding the Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard.

“Annual Audit Plan” means a plan developed annually by the Compliance Enforcement Authority that includes the Reliability Standards and Registered Entities to be audited and the schedule of Compliance Audits for the calendar year.

“Annual Report” means the annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 13.0 of Appendix 4D.

“Applicable Governmental Authority” means the FERC within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.

“Applicable Requirement” means a Requirement of a CIP Standard that (i) expressly provides either (A) that compliance with the terms of the Requirement is required where or as technically feasible, or (B) that technical limitations may preclude compliance with the terms of the Requirement; or (ii) is subject to Appendix 4D by FERC directive.

#“Approval of the Exception Request” or “Approval” means the determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

#“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.\*\*

#“Balancing Authority Area” means the collection of generation, transmission, and Loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains Load-resource balance within this area.\*\*

“Base Penalty Amount” means the proposed Penalty for a violation of a Reliability Standard as initially determined pursuant to Sections 4.1 and 4.2 of the NERC *Sanction Guidelines*, before application of any adjustment factors.

#“BES Definition” means the NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

#“Blackstart Resource” means a generating unit(s) and its associated set of equipment which has the ability to be started without support from the System or is designed to remain energized without connection to the remainder of the System, with the ability to energize a bus, meeting the Transmission Operator’s restoration plan needs for Real and Reactive Power capability, frequency and voltage control, and that has been included in the Transmission Operator’s restoration plan.\*\*

“Board” or “Board of Trustees” means the Board of Trustees of NERC.

“Board of Trustees Compliance Committee,” “BOTCC” or “Compliance Committee” means the Compliance Committee of the NERC Board of Trustees.

#“Bulk Electric System” or “BES” means unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

**Inclusions:**

- **I1** - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.
- **I2** - Generating resource(s) with gross individual nameplate rating greater than 20 MVA or gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- **I3** - Blackstart Resources identified in the Transmission Operator’s restoration plan.
- **I4** - Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.
- **I5** –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1.

**Exclusions:**

- **E1** - Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
  - a) Only serves Load. Or,
  - b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,
  - c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.

- **E2** - A generating unit or multiple generating units on the customer’s side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity

provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.

- **E3 - Local networks (LN):** A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:
  - a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
  - b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and
  - c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).
- **E4 – Reactive Power devices** owned and operated by the retail customer solely for its own use.

Note - Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.\*\*

“Bulk Power System” means, depending on the context: (i) Facilities and control systems necessary for operating an interconnected electric energy supply and transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy [++]. (ii) Solely for purposes of Appendix 4E, Bulk Electric System.

“Canadian” means one of the following: (a) a company or association incorporated or organized under the laws of Canada, or its designated representative(s) irrespective of nationality; (b) an agency of a federal, provincial, or local government in Canada, or its designated representative(s) irrespective of nationality; or (c) a self-representing individual who is a Canadian citizen residing in Canada.

#“Canadian Entity” means a Registered Entity (or, solely for purposes of Appendix 4D, a Responsible Entity) that is organized under Canadian federal or provincial law.

“Cascading” means the uncontrolled successive loss of System Elements triggered by an incident at any location. Cascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area predetermined by studies.\*\*

“CCC” means the NERC Compliance and Certification Committee.

“Certification” means, depending on the context, (i) the process undertaken by NERC and a Regional Entity to verify that an entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator and/or Reliability Coordinator; such Certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure; or (ii) for purposes of Section 600 of the Rules of Procedure, an official recognition that indicates the recipient has passed a NERC exam or completed a specified number of Continuing Education Hours.

“Certification Staff” means individuals employed or contracted by NERC who have the authority to make initial determinations of Certification of entities performing reliability functions.

“Certification Team” means a team assembled by a Regional Entity that will be responsible for performing the activities included in the Certification process for an entity pursuant to Appendix 5A.

“Classified National Security Information” means Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

“Clerk” means an individual assigned by the Compliance Enforcement Authority to perform administrative tasks relating to the conduct of hearings as described in Attachment 2, Hearing Procedures, to Appendix 4C.

“Commission” means the Federal Energy Regulatory Commission or FERC.

“Complaint” means an allegation that a Registered Entity violated a Reliability Standard.

“Compliance and Certification Manager” means individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities with applicable NERC Reliability Standards.

“Compliance Audit” means a systematic, objective review and examination of records and activities to determine whether a Registered Entity meets the Requirements of applicable Reliability Standards.

“Compliance Audit Participants” means Registered Entities scheduled to be audited and the audit team members.

“Compliance Enforcement Authority” means NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

“Compliance Enforcement Authority’s Area of Responsibility” means the Compliance Enforcement Authority’s Region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s Area of Responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

“Compliance Investigation” means a comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

“Compliance Monitoring and Enforcement Program” or “CMEP” means, depending on the context (1) the NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the NERC Rules of Procedure) or the Commission-approved program of a Regional Entity, as applicable, or (2) the program, department or organization within NERC or a Regional Entity that is responsible for performing compliance monitoring and enforcement activities with respect to Registered Entities’ compliance with Reliability Standards.

“Compliant Date” means the date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

“Confidential Business and Market Information” means any information that pertains to the interests of any entity, that was developed or acquired by that entity, and that is proprietary or competitively sensitive.

“Confidential Information” means (i) Confidential Business and Market Information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; or (vi) Cyber Security Incident Information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) for purposes of Appendix 4D, any other information that is designated as Confidential Information in Section 11.0 of Appendix 4D.

“Confirmed Violation” means an Alleged Violation for which (1) the Registered Entity has accepted or not contested the Notice of Alleged Violation and Penalty or Sanction or other notification of the Alleged Violation, or (2) there has been the issuance of a final order from NERC or a Regional Entity Hearing Body finding a violation, Penalty or sanction, or (3) the period for requesting a hearing or an appeal has expired, or (4) the Registered Entity has executed a settlement agreement pursuant to Section 5.6.

“Continuing Education Hour” or “CE Hour” means based on sixty clock minutes, and includes at least fifty minutes of participation in a group or self-study learning activity that meets the criteria of the NERC Continuing Education Program.

“Continuing Education Program Provider” or “Provider” means the individual or organization offering a learning activity to participants and maintaining documentation required by Section 600 of the Rules of Procedure.

“Coordinated Functional Registration” means where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more Reliability Standard(s) applicable to a particular function, and/or for one or more Requirement(s)/sub-Requirement(s) within particular Reliability Standard(s).

“Covered Asset” means a Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

“Credential” means a NERC designation that indicates the level of qualification achieved (i.e., reliability operator; balancing, interchange, and transmission operator; balancing and interchange operator; and transmission operator).

“Critical Assets” means Facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System.\*\*

“Critical Cyber Assets” means Cyber Assets critical to the reliable operation of Critical Assets.\*\*

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing Critical Infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on Critical Infrastructure; and (iii) does not simply give the location of the Critical Infrastructure.++

“Critical Infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.++

“Critical Infrastructure Protection Standard” or “CIP Standard” means any of NERC Reliability Standards CIP-002 through CIP-009.

“Cross-Border Regional Entity” means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.++

“Cyber Assets” means programmable electronic devices and communication networks including hardware, software, and data.\*\*

“Cyber Security Incident” means any malicious or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk Power System.++

“Cyber Security Incident Information” means any information related to, describing, or which could be used to plan or cause a Cyber Security Incident.

“Days”, as used in Appendix 5A with respect to the Registration and Certification processes, means calendar days.

“Delegate” means a person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

“Director of Compliance” means the Director of Compliance of NERC or of the Compliance Enforcement Authority, as applicable, or other individual designated by the Compliance Enforcement Authority who is responsible for the management and supervision of Compliance Staff, or his or her designee.

#“Disapproval of the Exception Request” or “Disapproval” means the determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

#“Distribution Factor” means the portion of an Interchange Transaction, typically expressed in per unit that flows across a transmission facility (Flowgate).\*\*

“Distribution Provider” means the entity that provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.\*\*

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“Effective Date” means the date, as specified in a notice ~~rejecting or~~ disapproving a TFE Request or terminating an approved TFE, on which the ~~rejection,~~ disapproval or termination becomes effective.

“Electric Reliability Organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System in the United States, subject to Commission review. The organization may also have received recognition by Applicable



Governmental Authorities in Canada and Mexico to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries.

“Element” means any electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line. An Element may be comprised of one or more components.\*\*

“Eligible Reviewer” means a person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

“End Date” means the last date of the period to be covered in a Compliance Audit.

“Essential Actions” or “Level 3 (Essential Actions)” is a notification issued by NERC in accordance with Section 810.3.3 of the Rules of Procedure.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

#“Exception” means either an Inclusion Exception or an Exclusion Exception.

#“Exception Procedure” means the procedure set forth in Appendix 5C.

“Exception Report” means information provided to the Compliance Enforcement Authority by a Registered Entity indicating that a violation of a Reliability Standard has occurred (e.g., a System Operating Limit has been exceeded) or enabling the Compliance Enforcement Authority to ascertain the Registered Entity’s compliance.

#“Exception Request” means a request made by a Submitting Entity in accordance with Appendix 5C for an Exception.

#“Exception Request Form” means the form adopted by each Regional Entity, in accordance with a template provided by NERC, for use by Submitting Entities in submitting Exception Requests; provided, that the Exception Request Form must include Section III.B as adopted by NERC.

“Exclusion Exception” means a determination that an Element that falls within the BES Definition should be excluded from the BES.

“Expiration Date” means the date on which an approved TFE expires.

“Facility” means a set of electrical equipment that operates as a single Bulk Electric System Element (e.g., a line, a generator, a shunt compensator, transformer, etc.)\*\*

“FERC” means the United States Federal Energy Regulatory Commission.

“Final Penalty Amount” means the final, proposed Penalty for violation of a Reliability Standard, determined in accordance with the *Sanction Guidelines*.

#“Flowgate” means 1.) A portion of the transmission system through which the Interchange Distribution Calculator calculates the power flow from Interchange Transactions. 2.) A mathematical construct, comprised of one or more monitored transmission Facilities and optionally one or more contingency Facilities, used to analyze the impact of power flows upon the Bulk Electric System.\*\*

“FOIA” means the U.S. Freedom of Information Act, 5 U.S.C. §552.

“Footprint” means the geographical or electric area served by an entity.

“Functional Entity” means an entity responsible for a function that is required to ensure the Reliable Operation of the electric grid as identified in the NERC Reliability Standards.

“Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services.\*\*

“Generator Owner” means an entity that owns and maintains generating units.\*\*

“Hearing Body” or “Regional Entity Hearing Body” means the body established or designated by the Compliance Enforcement Authority to conduct hearings and issue decisions concerning disputed compliance matters in accordance with Attachment 2, Hearing Procedures, of Appendix 4C.

“Hearing Officer” means, depending on the context, (i) an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to Attachment 2, Hearing Procedures, of Appendix 4C, or (ii) solely for hearings conducted pursuant to Appendix 4E, (A) a CCC member or (B) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to the Hearing Procedures in Appendix E; the Hearing Officer shall not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Appendix 4E.

“Hearing Procedures” means, depending on the context, (i) Attachment 2 to the NERC or a Regional Entity CMEP, as applicable, or (ii) the hearing procedures of the NERC Compliance and Certification Committee in Appendix 4E.

#“Inclusion Exception” means a determination that an Element that falls outside the BES Definition should be included in the BES.

“Interchange” means energy transfers that cross Balancing Authority boundaries.\*\*

“Interchange Authority” means the responsible entity that authorizes the implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communications of Interchange information for reliability assessment purposes.\*\*

#“Interchange Distribution Calculator” means the mechanism used by Reliability Coordinators in the Eastern Interconnection to calculate the distribution of Interchange Transactions over specific Flowgates. It includes a database of all Interchange Transactions and a matrix of the Distribution Factors for the Eastern Interconnection.\*\*

“Interchange Schedule” means an agreed-upon Interchange Transaction size (megawatts), start and end time, beginning and ending ramp times and rate, and type required for delivery and receipt of power and energy between the Source and Sink Balancing Authorities involved in the transaction.\*\*

“Interchange Transaction” means an agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.\*\*

“Interconnected Operations Service” means a service (exclusive of basic energy and Transmission Services) that is required to support the Reliable Operation of interconnected Bulk Electric Systems.\*\*

“Interconnection” means a geographic area in which the operation of Bulk Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the Facilities within their control.++

“Interconnection Reliability Operating Limit” means a System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading outages that adversely impact the reliability of the Bulk Electric System.\*\*

“Interpretation” means an addendum to a Reliability Standard, developed in accordance with the NERC *Standard Processes Manual* and approved by the Applicable Governmental Authority(ies), that provides additional clarity about one or more Requirements in the Reliability Standard.

“ISO/RTO” means an independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.

“Joint Registration Organization” means an entity that registers in the Compliance Registry to perform reliability functions for itself and on behalf of one or more of its members or related entities for which such members or related entities would otherwise be required to register.

#“Lead Entity” means the entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

“Lead Mediator” means a member of a mediation team formed pursuant to Appendix 4E who is selected by the members to coordinate the mediation process and serve as the mediation team’s primary contact with the Parties.

#“Load” means an end-user device or customer that receives power from the electric system.\*\*

“Load-Serving Entity” means an entity that secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.\*\*

“Mapping” means the process of determining whether a Regional Entity’s Footprint is being served by Registered Entities.

“Material Change” means a change in facts that modifies Required Information in connection with an approved TFE. Examples of a Material Change could include, but are not limited to an increase in device count (but not a decrease), change in compensating measures, change in statement of basis for approval for the TFE, a change in the Expiration Date of the TFE, or a Responsible Entity achieving Strict Compliance with the Applicable Requirement.

“Material Change Report” means a report submitted by the Responsible Entity to the Regional Entity in the event there is a Material Change to the facts underlying an approved TFE pursuant to Section 4.0 of Appendix 4D.

“Mediation Settlement Agreement” means a written agreement entered into by the Parties to a mediation pursuant to Appendix 4E that resolves the dispute.

“Member” means a member of NERC pursuant to Article II of its Bylaws.

“Member Representatives Committee” or “MRC” means the body established pursuant to Article VIII of the NERC Bylaws.

#“Mexican Entity” means a Registered Entity that is organized under Mexican law.

“Mitigating Activities” means actions taken by a Registered Entity to correct and prevent recurrence of a noncompliance, whether or not the actions are embodied in a Mitigation Plan.

“Mitigation Plan” means an action plan developed by the Registered Entity to (1) correct a violation of a Reliability Standard and (2) prevent re-occurrence of the violation.

“NERC-Approved Learning Activity” means training that maintains or improves professional competence and has been approved by NERC for use in its Continuing Education Program.

“NERC Compliance Monitoring and Enforcement Program Implementation Plan” or “NERC Implementation Plan” means the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan that specifies the Reliability Standards that are subject to reporting

by Registered Entities to the Compliance Enforcement Authority in order to verify compliance and identifies the appropriate monitoring procedures and reporting schedules for each such Reliability Standard.

“NERC Compliance Registry,” “Compliance Registry” or “NCR” means a list, maintained by NERC pursuant to Section 500 of the NERC Rules of Procedure and Appendix 5B, the NERC *Statement of Compliance Registry Criteria*, of the owners, operators and users of the Bulk Power System, and the entities registered as their designees, that perform one or more functions in support of reliability of the Bulk Power System and are required to comply with one or more Requirements of Reliability Standards.

“NERC Identification Number” or “NERC ID” means a number given to NERC Registered Entities that will be used to identify the entity for certain NERC activities. Corporate entities may have multiple NERC IDs to show different corporate involvement in NERC activities.

“NERC Organization Certification” or “Organization Certification” means the process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator; such certification activities are further described in Section 500 and Appendix 5A of the NERC Rules of Procedure.

“Net Energy for Load” or “NEL” means net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.

“Notice of Alleged Violation and Proposed Penalty or Sanction” means a notice issued by the Compliance Enforcement Authority to a Registered Entity pursuant to Section 5.3 of Appendix 4C.

“Notice of Completion of Enforcement Action” means a notice issued by the Compliance Enforcement Authority to a Registered Entity, pursuant to Section 5.10 of Appendix 4C, stating that an enforcement action is closed.

“Notice of Confirmed Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity confirming the violation of one or more Reliability Standards.

“Notice of Penalty” means a notice prepared by NERC and filed with FERC, following approval by NERC of a Notice or other notification of Confirmed Violation or a settlement agreement, stating the Penalty or sanction imposed or agreed to for the Confirmed Violation or as part of the settlement.

“Notice of Possible Violation” means a notice issued by the Compliance Enforcement Authority to a Registered Entity that (1) states a Possible Violation has been identified, (2) provides a brief description of the Possible Violation, including the Reliability Standard Requirement(s) and the date(s) involved, and (3) instructs the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

“NRC” means the United States Nuclear Regulatory Commission.

“NRC Safeguards Information” means Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21-73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

“Open Access Transmission Tariff” means an electronic transmission tariff accepted by the U.S. Federal Energy Regulatory Commission requiring the Transmission Service Provider to furnish to all shippers with non-discriminating service comparable to that provided by Transmission Owners to themselves.\*\*

#“Owner” means the owner(s) of an Element or Elements that is or may be determined to be part of the BES as a result of either the application of the BES Definition or an Exception, or another entity, such as an operator, authorized to act on behalf of the owner of the Element or Elements in the context of an Exception Request.

~~“Part A Required Information” means Required Information that is to be provided in Part A of a Responsible Entity’s TFE Request.~~

~~“Part B Required Information” means Required Information that is to be provided in Part B of a Responsible Entity’s TFE Request.~~

“Participant” means a Respondent and any other Person who is allowed or required by the Hearing Body or by FERC to participate as an intervenor in a proceeding conducted pursuant to the Hearing Procedures, and as used in the Hearing Procedures shall include, depending on the context, the members of the Compliance Staff that participate in a proceeding or the members of the Certification Staff that participate in a proceeding pursuant to Appendix 4E.

“Party” or “Parties” means a Person or the Persons participating in a mediation pursuant to Appendix 4E.

“Penalty” means and includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity or Respondent to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s or Respondent’s violation and take into consideration any timely efforts made by the Registered Entity or Respondent to remedy the violation.

“Periodic Data Submittals” means modeling, studies, analyses, documents, procedures, methodologies, operating data, process information or other information to demonstrate compliance with Reliability Standards and provided by Registered Entities to the Compliance Enforcement Authority on a time frame required by a Reliability Standard or an ad hoc basis.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Planning Authority” means the responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.\*\*

“Point of Delivery” means a location that a Transmission Service Provider specifies on its transmission system where an Interchange Transaction leaves or a Load-Serving Entity receives its energy.\*\*

“Point of Receipt” means a location that the Transmission Service Provider specifies on its transmission system where an Interchange Transaction enters or a generator delivers its output.

“Possible Violation” means the identification, by the Compliance Enforcement Authority, of a possible failure by a Registered Entity to comply with a Reliability Standard that is applicable to the Registered Entity.

“Preliminary Screen” means an initial evaluation of evidence indicating potential noncompliance with a Reliability Standard has occurred or is occurring, conducted by the Compliance Enforcement Authority for the purpose of determining whether a Possible Violation exists, and consisting of an evaluation of whether (1) the entity allegedly involved in the potential noncompliance is registered, (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to a reliability function for which the entity is registered, and (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation which is currently being processed.

“Probation” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure during which the certificate is still valid. During the probationary period, a subsequent offense of misconduct, as determined through the same process as described above, may be cause for more serious consequences.

“Protected FOIA Information” means Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)), under any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

“Protection System” means protective relays which respond to electrical quantities, communications systems necessary for correct operation of protective functions, voltage and current sensing devices providing inputs to protective relays, station dc supply associated with protective functions (including batteries, battery chargers, and non-battery-based dc supply), and control circuitry associated with protective functions through the trip coil(s) of the circuit breakers or other interrupting devices.\*\*

“Purchasing-Selling Entity” means the entity that purchases, or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities.\*\*

#“Reactive Power” means the portion of electricity that establishes and sustains the electric and magnetic fields of alternating-current equipment. Reactive Power must be supplied to most types of magnetic equipment, such as motors and transformers. It also must supply the reactive losses on transmission facilities. Reactive Power is provided by generators, synchronous condensers, or electrostatic equipment such as capacitors and directly influences electric system voltage. It is usually expressed in kilovars (kvar) or megavars (Mvar).\*\*

#“Real Power” means the portion of electricity that supplies energy to the Load.\*\*

“Receiving Entity” means NERC or a Regional Entity receiving Confidential Information from an owner, operator, or user of the Bulk Power System or from any other party.

#“Recommendation” for purposes of Appendix 5C means the report to NERC containing the evaluation prepared in accordance with section 5.2 of Appendix 5C concerning whether or to what extent an Exception Request should be approved.

“Recommendations” or “Level 2 (Recommendations)” is a notification issued by NERC in accordance with Section 810.3.2 of the Rules of Procedure.

“Region” means the geographic area, as specified in a Regional Entity’s delegation agreement with NERC, within which the Regional Entity is responsible for performing delegated functions.

“Regional Criteria” means reliability requirements developed by a Regional Entity that are necessary to implement, to augment, or to comply with Reliability Standards, but which are not Reliability Standards. Such Regional Criteria may be necessary to account for physical differences in the Bulk Power System but are not inconsistent with Reliability Standards nor do they result in lesser reliability. Such Regional Criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional Criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

“Regional Entity” means an entity having enforcement authority pursuant to 18 C.F.R. § 39.8.++

“Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan” or “Regional Implementation Plan” means an annual plan, submitted by on or about October 1 of each year to NERC for approval that, in accordance with NERC Rule of Procedure Section 401.6 and the NERC Compliance Monitoring and Enforcement Program Implementation Plan, identifies (1) all Reliability Standards identified by NERC to be actively monitored during each year, (2) other Reliability Standards proposed for active monitoring by the Regional Entity, (3) the methods to be used by the Regional Entity for reporting, monitoring, evaluation, and assessment of performance criteria with each Reliability Standard, and (4) the Regional Entity’s Annual Audit Plan.



“Regional Reliability Standard” means a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Applicable Governmental Authority(ies), shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Registered Ballot Body” means that aggregation of all entities or individuals that qualify for one of the Segments approved by the Board of Trustees, and are registered with NERC as potential ballot participants in the voting on proposed Reliability Standards.

“Registered Entity” means an owner, operator, or user of the Bulk Power System, or the entity registered as its designee for the purpose of compliance, that is included in the NERC Compliance Registry.

“Registration” or “Organization Registration” means the processes undertaken by NERC and Regional Entities to identify which entities are responsible for reliability functions within the Regional Entity’s Region.

#“Rejection of the Exception Request” or “Rejection” means the determination that an Exception Request is not an eligible Exception Request (i.e., a Request permitted by section 4.1 of Appendix 5C) or does not contain all the Required Information in accordance with section 4.5 of Appendix 5C in order to be reviewed for substance.

“Reliability Coordinator” means the entity that is the highest level of authority who is responsible for the Reliable Operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator’s vision.\*\*

“Reliability Coordinator Area” means the collection of generation, transmission and loads within the boundaries of the Reliability Coordinator. Its boundary coincides with one or more Balancing Authority Areas.\*\*

“Reliability Standard” means a requirement to provide for Reliable Operation of the Bulk Power System, including without limiting the foregoing, requirements for the operation of existing Bulk Power System Facilities, including cyber security protection, and including the design of planned additions or modifications to such Facilities to the extent necessary for Reliable Operation of the Bulk Power System, but the term does not include any requirement to enlarge Bulk Power System Facilities or to construct new transmission capacity or generation capacity. A Reliability Standard shall not be effective in the United States until approved by the Federal Energy

Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the Applicable Governmental Authority.

“Reliability Standards Development Plan” means the forward-looking plan developed by NERC on an annual basis setting forth the Reliability Standards development projects that are scheduled to be worked on during the ensuing three-year period, as specified in Section 310 of the Rules of Procedure.

“Reliable Operation” means operating the Elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or Cascading failures of such system will not occur as a result of a sudden disturbance, including a Cyber Security Incident, or unanticipated failure of system Elements.++

“Remedial Action Directive” means an action (other than a Penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.

“Reporting Entity” means an entity required to provide data or information requested by NERC or a Regional Entity in a request for data or information pursuant to Section 1600 of the Rules of Procedure.

“Requirement” means an explicit statement in a Reliability Standard that identifies the functional entity responsible, the action or outcome that must be achieved, any conditions achieving the action or outcome, and the reliability-related benefit of the action or outcome. Each Requirement shall be a statement with which compliance is mandatory.

“Required Date” means the date given a Registered Entity in a notice from the Compliance Enforcement Authority by which some action by the Registered Entity is required.

#“Required Information” means, as applicable, either (i) the information required to be provided in a TFE Request, as specified in Section 4.0 of Appendix 4D; or (ii) the information required to be provided in an Exception Request, as specified in section 4.0 of Appendix 5C.

“Reserve Sharing Group” means a group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority’s use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g. ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.\*\*

“Resource Planner” means the entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority area.\*\*

“Respondent” means, depending on the context, the Registered Entity, who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable, or the Registered Entity that is the subject of the Certification decision that is the basis for a proceeding under Appendix 4E.

“Responsible Entity” means an entity that is registered for a reliability function in the NERC Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the “Applicability” section of the CIP Standard.

“Revoked” means a NERC certificate that has been suspended for more than twelve months. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified. The certificate holder will be required to pass an exam to be certified again. Any CE Hours accumulated prior to or during the revocation period will not be counted towards Credential Maintenance.

“Revoke for Cause” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure during which the certificate is no longer valid and requiring successfully passing an exam to become certified. However, an exam will not be authorized until the revocation period expires. CE Hours earned before or during this revocation period will not be counted for maintaining a Credential.

#“Scope of Responsibility” means the registered functions of a Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority and the geographical or electric region in which the Planning Authority, Reliability Coordinator, Transmission Operator, Transmission Planner or Balancing Authority operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

#“Section I Required Information” means Required Information that is to be provided in Section I of a Submitting Entity’s Exception Request.

#“Section II Required Information” means Required Information that is to be provided in Section II of a Submitting Entity’s Exception Request.

#“Section III Required Information” means Required Information that is to be provided in Section III of a Submitting Entity’s Exception Request.

“Sector” means a group of Members of NERC that are Bulk Power System owners, operators, or users or other persons and entities with substantially similar interests, including governmental entities, as pertinent to the purposes and operations of NERC and the operation of the Bulk Power System, as defined in Article II, Section 4 of the NERC Bylaws. Each Sector shall constitute a class of Members for purposes of the New Jersey Nonprofit Corporation Act.

“Segment” means one of the subsets of the Registered Ballot Body whose members meet the qualification criteria for the subset.

“Self-Certification” means an attestation by a Registered Entity that it is compliant or non-compliant with a Reliability Standard Requirement that is the subject of the Self-Certification, or that it does not own Facilities that are subject to the Reliability Standard Requirement, or that the Reliability Standard Requirement is not applicable to the Registered Entity.

“Self-Report” means a report by a Registered Entity stating that the Registered Entity believes it has, or may have, violated a Reliability Standard.

“Senior Manager” means the person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity’s implementation of, and adherence to, the CIP Standards.

#“Sink Balancing Authority” means the Balancing Authority in which the Load (sink) is located for an Interchange Transaction.\*\*

“Source Balancing Authority” means the Balancing Authority in which the generation (source) is located for an Interchange Transaction.\*\*

#“Special Protection System” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than and/or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows. A Special Protection System does not include (a) underfrequency or undervoltage Load shedding or (b) fault conditions that must be isolated, or (c) out-of-step relaying (not designed as an integral part of a Special Protection System).\*\*

“Spot Check” means a process in which the Compliance Enforcement Authority requests a Registered Entity to provide information (1) to support the Registered Entity’s Self-Certification, Self-Report, or Periodic Data Submittal and to assess whether the Registered Entity complies with Reliability Standards, or (2) as a random check, or (3) in response to operating problems or system events.

“Staff” or “Compliance Staff” means individuals employed or contracted by NERC or the Compliance Enforcement Authority who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans.

“Strict Compliance” means compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

#“Submitting Entity” means (i) an owner, operator, or user of the Bulk Power System or any other party that submits information to NERC or a Regional Entity that it reasonably believes contains Confidential Information or, (ii) solely for purposes of Appendix 5C, the entity that submits an Exception Request in accordance with section 4.0 of Appendix 5C.

“Suspended” means certificate status due to an insufficient number of CE Hours being submitted prior to the expiration of a certificate. While in this state, a certificate holder can not perform any task that requires an operator to be NERC-certified.

“System” means a combination of generation, transmission and distribution components.\*\*

“System Operating Limit” means the value (such as MW, Mvar, amperes, frequency or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria.\*\*

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies NERC’s or the Compliance Enforcement Authority’s (as applicable) conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the Hearing Body or Hearing Panel.

“Technical Feasibility Exception” or “TFE” means an exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in section 3.0 of Appendix 4D.

#“Technical Review Panel” means a panel established pursuant to section 5.3 of Appendix 5C.

“Termination of Credential” means a step in the disciplinary process pursuant to Section 605 of the Rules of Procedure whereby a Credential is permanently Revoked.

“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.

“TFE Request” means a request submitted by a Responsible Entity in accordance with Appendix 4D for an exception from Strict Compliance with an Applicable Requirement.

“Transmission Customer” means 1. any eligible customer (or its designated agent) that can or does execute a Transmission Service agreement or can and does receive Transmission Service. 2. Any of the following responsible entities: Generator Owner, Load-Serving Entity, or Purchasing-Selling Entity.\*\*

“Transmission Operator” means the entity responsible for the reliability of its “local” transmission system, and that operates or directs the operations of the transmission Facilities.\*\*

“Transmission Owner” means the entity that owns and maintains transmission Facilities.\*\*

“Transmission Planner” means the entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.\*\*

“Transmission Service” means services provided to the Transmission Customer by the Transmission Service Provider to move energy from a Point of Receipt to a Point of Delivery.\*\*

“Transmission Service Provider” means the entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.\*\*

“Variance” means an aspect or element of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities, or to a particular entity or class of entities. A Variance allows an alternative approach to meeting the same reliability objective as the Reliability Standard, and is typically necessitated by a physical difference. A Variance is embodied within a Reliability Standard and as such, if adopted by NERC and approved by the Applicable Governmental Authority(ies), shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities or to procedures prescribed by the Applicable Governmental Authority.

“Violation Risk Factor” or “VRF” means a factor (lower, medium or high) assigned to each Requirement of a Reliability Standard to identify the potential reliability significance of noncompliance with the Requirement.

“Violation Severity Level” or “VSL” means a measure (lower, moderate, high or severe) of the degree to which compliance with a Requirement was not achieved.

“Wide Area” means the entire Reliability Coordinator Area as well as the critical flow and status information from adjacent Reliability Coordinator Areas as determined by detailed system studies to allow the calculation of Interconnected Reliability Operating Limits.\*\*