

October 29, 2009

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation
Docket No. RR09-___-000
Petition for Approval of Amendments to the Rules of Procedure of the
North American Electric Reliability Corporation — New Section 412 and
Appendix 4D, “Procedure for Requesting and Receiving Technical Feasibility
Exceptions to NERC Critical Infrastructure Protection Standards”**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC), in accordance with 18 C.F.R. §39.10, hereby submits this Petition for Approval of Amendments to the Rules of Procedure of the North American Electric Reliability Corporation — New Section 412 and Appendix 4D, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards.”

NERC’s filing consists of (1) this transmittal letter, (2) the narrative text of this filing which follows this transmittal letter, and (3) Attachments 1 through 3, all of which are contained in a single pdf file. The Table of Contents to the narrative text list the three attachments.

Please note that NERC is respectfully requesting that the Commission issue an Order approving the proposed amendments to NERC’s Rules of Procedure by on or about January 21, 2010 (please see pages 1-2 of the narrative text of the filing.)

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride
Owen E. MacBride

Attorney for North American Electric
Reliability Corporation

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	NOTICES AND COMMUNICATIONS.....	2
III.	STATEMENT OF BASIS AND PURPOSE OF PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE.....	3
A.	Commission Orders.....	3
1.	CIP Standards NOPR.....	3
2.	Order No. 706.....	5
B.	Proposed Section 412 of the NERC Rules of Procedure.....	7
C.	Proposed Appendix 4D to the NERC Rules of Procedure.....	8
1.	Section 1.0 – Introduction.....	8
2.	Section 2.0 – Definitions.....	12
3.	Section 3.0 – Basis for Approval of a Technical Feasibility Exception.....	12
4.	Section 4.0 – Form, Contents and Submission of a TFE Request.....	13
5.	Section 5.0 – Review, Acceptance/Rejection, and Approval/Disapproval of a TFE Request.....	17
6.	Section 6.0 – Implementation and Reporting by the Responsible Entity Pursuant to an Approved TFE Request.....	21
7.	Section 7.0 – Amendment of a TFE Request or Approved TFE...22	
8.	Section 8.0 – Compliance Audit Requirements Relating to Approved TFE.....	22
9.	Section 9.0 – Termination of an Approved TFE.....	23
10.	Section 10.0 – Hearings and Appeals Process for Responsible Entity.....	23

11.	Section 11.0 – Confidentiality of TFE Requests and Related Information.....	24
12.	Section 12.0 – Annual Report to FERC and Other Applicable Governmental Authorities.....	24
IV.	APPROVAL PROCESS FOR THE PROPOSED AMENDMENTS.....	25
V.	INTERIM TFE PROCESSES.....	27
VI.	CONCLUSION.....	29

ATTACHMENTS:

- Attachment 1:** Proposed new Section 412 of the NERC Rules of Procedure
- Attachment 2:** Proposed new Appendix 4D to the NERC Rules of Procedure, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards”
- Attachment 3:** For information — Template Part A Form and Instructions

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”), in accordance with §215(f) of the Federal Power Act (“FPA”) and 18 C.F.R. §39.10, respectfully requests Commission approval of two amendments to NERC’s Rules of Procedure (“ROP”). The proposed amendments will add to the ROP (i) new Section 412, “Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards” (**Attachment 1** to this Petition), and (ii) new Appendix 4D, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards” (**Attachment 2** to this Petition). Section 412 and Appendix 4D are intended to implement the Commission’s directive in Order No. 706 that NERC develop and adopt a set of conditions or criteria that a responsible entity must follow when relying on the “technical feasibility exception” (“TFE”) contained in specific Requirements (“Applicable Requirements”) of certain NERC Critical Infrastructure Protection (“CIP”) Standards.¹ Proposed Section 412 and Appendix 4D were approved by the NERC Board of Trustees on October 16, 2009.

NERC respectfully asks the Commission to issue an order approving proposed §412 and Appendix 4D by on or about January 21, 2010. The dates by which some Responsible Entities² are required to be “Compliant” with Applicable Requirements of the CIP Standards (the “Compliant Date”, *see* §2.8 of Appendix 4D) either are already past or fast approaching.³ As

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040 (2008), at PP 178 and 222.

² A Responsible Entity is a registered entity that is responsible for complying with an Applicable Requirement, as specified in the “Applicability” section of a CIP Standard. *See* §2.23 of Appendix 4D.

³ The NERC “Implementation Plan for Cyber Security Standards CIP-002-1 Through CIP-009-1” (“CIP Implementation Plan”; http://www.nerc.com/files/Guidance_on_CIP_Standards.pdf), establishes the dates by which registered entities must be “Compliant” with the Requirements of

described in §V of this Petition, NERC has posted Interim TFE Rules for Responsible Entities to use in submitting TFE Requests until Appendix 4D is approved by the Commission and effective⁴, and in Appendix 4D has established a submission window through January 31, 2010 for TFE Requests for Applicable Requirements for which the Responsible Entity's Compliant Date is already past.⁵ However, expeditious approval of the permanent procedure by the Commission will resolve the uncertainty that currently exists among Responsible Entities as to the procedures and processes for relying on a TFE.

II. NOTICES AND COMMUNICATIONS

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

Rick Sergel
President and Chief Executive Officer
David N. Cook*
Vice President and General Counsel
North American Electric Reliability
Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

*Persons to be included on the
Commission's official service list.

Owen E. MacBride*
Debra Ann Palmer
Schiff Hardin LLP
1666 K Street, N.W., Suite 300
Washington, DC 20036-4390
(202) 778-6400
(202) 778-6460 – facsimile
omacbride@schiffhardin.com
dpalmer@schiffhardin.com

Rebecca J. Michael, Assistant General Counsel
North American Electric Reliability Corporation
1120 G Street, N.W., Suite 990
Washington, D.C. 2005-3801
(202) 393-3998
(202) 393-3995 – facsimile
Rebecca.michael@nerc.net

these CIP Standards. The CIP Implementation Plan establishes four categories of registered entities, with different Compliant Dates applicable to each category. In general, “Table 1” and Table 2” entities were required to be “Compliant” with applicable CIP Standards by June 30, 2008 or 2009, and “Table 3” entities are required to be “Compliant” by December 31, 2009.

⁴ See NERC Compliance Process Bulletin #2009-007 (as revised Oct. 13, 2009), available at http://www.nerc.com/files/2009-007_Public_Notice-V1.1.pdf.

⁵ See §4.5 of Appendix 4D.

III. STATEMENT OF BASIS AND PURPOSE OF PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE

Section 215(f) of the FPA, and the Commission’s regulations at 18 C.F.R. §39.10, require NERC, as the electric reliability organization in the U.S. (“ERO”), to file with the Commission for its approval any proposed ERO rule or change to an ERO rule. “Electric Reliability Organization Rule” is defined in §39.1 of the Commission’s regulations, 18 C.F.R. §39.1, to include “a rule of procedure” of the ERO. The filing must include a statement of the basis and purpose of the proposed ERO rule or revision and contain a description of the proceedings conducted by the ERO to develop the proposed ERO rule or rule revision. The first requirement is addressed in this §III of this Petition and the second requirement is addressed in §IV.

A. Commission Orders

1. CIP Standards NOPR

In its Notice of Proposed Rulemaking concerning NERC’s proposed CIP Standards CIP-002-1 through CIP-009-1, the Commission noted that two of the proposed CIP Standards contain language that provides exceptions from compliance with a Requirement, by requiring a responsible entity to take action “where technically feasible.”⁶ The Commission stated that the “technically feasible” phrase “is found in CIP-005-1, Requirements R2.4, R2.6, R3.1, [and] R3.2 and CIP-007-1, Requirements R4, R5.3, R6, [and] R6.3,” and that “[a]dditionally, CIP-007, Requirement R2.3 uses ‘technical limitations’ to similar effect.”⁷ The Commission proposed, for comment, to require NERC to establish a structure to require accountability from those who rely

⁶ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Docket No. RM06-22-000 (July 20, 2007) (“CIP NOPR”), at PP 68-69.

⁷ CIP NOPR at footnote 48.

on “technical feasibility” as the basis for an exception. The Commission stated its proposed structure would require a responsible entity to:

- (1) develop and implement interim mitigation steps to address the vulnerabilities associated with each exception;
- (2) develop and implement a remediation plan to eliminate the exception, including interim milestones and a reasonable completion date; and
- (3) obtain written approval of these steps by the senior manager assigned with overall responsibility for leading and managing the entity’s implementation of and adherence to the CIP Standards as provided in CIP-003-1, Requirement R2.⁸

The Commission also proposed to require the responsible entity to report and justify to NERC and the Regional Entity for approval each exception and its expected duration. The Commission stated that if any of its proposed conditions were not satisfied, NERC or the Regional Entity would inform the responsible entity that its claim to an exception based on technical feasibility was insufficient and not approved. Further, failure to timely rectify the deficiency would invalidate the exception for compliance purposes.⁹

Finally, the Commission proposed to require NERC to submit an annual report that would include the frequency of use of the technical feasibility provisions, the circumstances or justifications that prompted their use, the interim mitigation measures used to address the vulnerabilities, and the milestone schedule to eliminate them and bring the entities into compliance to eliminate future reliance on the exception.¹⁰

⁸ CIP NOPR at P 79.

⁹ CIP NOPR at P 79.

¹⁰ CIP NOPR at P 80.

2. Order No. 706

In Order No. 706, after considering extensive stakeholder comments submitted in response to the CIP NOPR, the Commission adopted a modified version of its proposed directive to NERC concerning the criteria for technical feasibility exceptions. The Commission again noted that two of the proposed CIP Standards provided for exceptions from compliance with certain Requirements based on “technical feasibility.”¹¹ The Commission “direct[ed] the ERO to develop a set of conditions or criteria that a responsible entity must follow when relying on the technical feasibility exception contained in specific Requirements of the CIP Reliability Standards.”¹² The Commission imparted guidance on a number of topics with respect to the conditions or criteria to be developed, including the following:

- The term “technical feasibility” should be “interpreted narrowly and without reference to considerations of business judgment.” (P 178; *see also* P 186)
- The proposed conditions for invoking the technical feasibility exception should allow for operational considerations and safety considerations. (PP 178 and 186)
- “[T]echnical feasibility issues are by their nature something that must be dealt with on a case-by-case basis, as they only arise in specific circumstances.” (P 179)
- The “underlying rationale” for a TFE is that “there is long-life equipment in place that is not readily compatible with a modern environment where cyber security issues are an acknowledged concern. . . [T]he possibility of being required to replace equipment before the end of its useful life is a valid concern.” (P 180)
- The Commission assumes “all responsible entities eventually will be able to achieve full compliance with the CIP Reliability Standards when the legacy equipment that creates the need for the exception is supplemented, upgraded or replaced.” (P 181)

¹¹ Order No. 706 at P 157. The Commission again stated that the “technically feasible” phrase “is found in CIP-005-1, Requirements R2.4, R2.6, R3.1, [and] R3.2 and CIP-007-1, Requirements R4, R5.3, R6, [and] R6.3,” and that “[a]dditionally, CIP-007, Requirement R2.3 uses ‘technical limitations’ to similar effect.” *Id.* at footnote 65.

¹² Order No. 706 at P 178.

- The meaning of “technical feasibility” should not be limited simply to whether something is technically possible but should also consider whether it is technically safe and operationally reasonable. (P 182)
- “[A]n integral issue in individual cases where legacy equipment presents a technical feasibility issue is whether an alternative course of action protects the reliability of the Bulk-Power System to an equal or greater degree than compliance would.” (P 183)
- NERC’s procedure for TFEs must include (1) a requirement that the responsible entity must develop, document and implement a mitigation plan that achieves a comparable level of security to the Requirement; and (2) a requirement that use of the TFE by a responsible entity must be accompanied by a remediation plan and timeline for elimination of the use of the TFE. (P 192)
- However, “a date certain for remediation may not be possible in some instances . . . An entity must provide an explanation when it believes that it is not possible for a remediation plan to provide a reasonable completion date.” (P 192)
- “[W]here mitigation measures are as or more effective than compliance, and in the case of minor technical or administrative requirements, replacement of certain assets before the end of their useful lives can be wasteful and inefficient.” Additionally, “remediation might not be necessary where compensating measures are equally effective in reducing risk”, provided that such cases are “subject to clear criteria and periodic review and, where necessary, updates.” (P 193)
- TFEs “should be reported and justified and subject to approval by the ERO or the relevant Regional Entity.” (P 209)
- The TFE Procedure must require approval of the responsible entity’s mitigation and remediation steps by its senior manager identified pursuant to CIP-003-1. (P 211)
- Regional Entities should, in the first instance, receive and catalogue notices of TFEs that are claimed; initial submission of notices should occur by the “Compliant” stage to allow Regional Entities to plan for auditing TFEs. (P 213)
- Actual evaluation and approval of TFEs should be performed in the audit process; this will increase the amount of sensitive information that can remain on-site, and will allow the ERO and Regional Entities to include personnel in audit teams with sufficient expertise to judge the need for a TFE and the sufficiency of preferred mitigation measures. (P 214)
- Approval of a TFE represents a determination on compliance with the applicable CIP Standard; however, the responsible entity should be able to rely on the TFE prior to formal approval. (PP 216-217)

- The approval process for TFEs should require NERC or a Regional Entity to approve any TFE, taking into account whether the TFE is needed and whether the mitigation and remediation steps are adequate to the circumstances. (P 218)
- In developing the accountability structure for the technical feasibility exception, NERC should include appropriate provisions to assure that governmental entities that are subject to Reliability Standards as users, owners or operators of the Bulk-Power System can safeguard sensitive information. (P 219)
- NERC should submit an annual report to the Commission that provides a wide-area analysis regarding the use of the TFE and the effect on Bulk-Power System reliability, addressing the frequency of 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 TFEs. The report should contain aggregated data with sufficient detail for the Commission to understand the frequency with which specific provisions are being invoked, plus high level data regarding mitigation and remediation plans over time and by region, but should not divulge Critical Energy Infrastructure Information. Responsible entities must cooperate with NERC and Regional Entities in providing information necessary for NERC to fulfill this reporting obligation. (PP 220-221 and footnote 74)
- In summary, NERC should develop a set of criteria that include mitigation steps, a remediation plan, a timeline for eliminating use of the TFE unless appropriate justification otherwise is provided, regular review of whether it continues to be necessary to invoke the exception, internal approval by the senior manager, wide-area approval through the audit process, and cooperation with the ERO to provide the Commission with high-level, wide-area analysis regarding the effects of technical feasibility exceptions on the reliability of the Bulk-Power System. (P 222)

As shown below, proposed Appendix 4D addresses each of the above-referenced provisions of Order No. 706.

B. Proposed Section 412 of the NERC Rules of Procedure¹³

Proposed new §412 of the ROP simply recognizes the availability of the TFE Procedure in Appendix 4D to the ROP:

A registered entity that is subject to a requirement of a NERC critical infrastructure protection reliability standard for which technical feasibility exceptions are permitted, may request a technical feasibility exception to the

¹³ Currently the last section in Section 400 of the ROP is §411; new §412 would be added immediately thereafter, and would also be added to the Table of Contents.

requirement, and the request will be reviewed, approved or disapproved, and if approved, implemented, in accordance with the *NERC Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standard*, Appendix 4D to these Rules of Procedure.

C. Proposed Appendix 4D to the NERC Rules of Procedure

The following subsections provide a section-by-section description of the principal provisions of proposed Appendix 4D, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards.” Terms that are capitalized in the following discussion are defined terms in Appendix 4D.

1. Section 1.0 – Introduction

Section 1.3, Scope, states that “This procedure for requesting and obtaining approval of TFEs is applicable only to those requirements of CIP Standards CIP-002 through CIP-009 that expressly provide either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement.” Section 1.3 then lists the Requirements of CIP Standards that are Applicable Requirements as of the effective date of Appendix 4D.¹⁴ The listed Applicable Requirements are those listed in footnote 48 of the CIP NOPR and footnote 65 of Order No. 706 with the addition that the list of Applicable Requirements in §1.3 expressly includes CIP-007-1 R5.3.1, R5.3.2 and R5.3.3. These are sub-requirements of Requirement R5.3, which was identified in footnote 48 of the CIP NOPR and footnote 65 of Order No. 706 and contains the phrase “as technically feasible.” Section 1.3 also recognizes the possibility of future additions or

¹⁴ The Commission has approved the proposed “Version 2” CIP standards (CIP-002-2 through CIP-009-2), but the effective date of the Version 2 CIP standards is April 1, 2010. *Order Approving Revised Reliability Standards for Critical Infrastructure Protection and Requiring Compliance Filing*, 128 FERC ¶ 61,291 (2009). NERC is requesting approval of proposed §412 and Appendix D of the ROP by on or about January 21, 2010, and in any event assumes the Commission will approve these proposed ROP amendments prior to April 1, 2010.

deletions to the list of Applicable Requirements based on changes to the CIP Standards adopted in accordance with the NERC Bylaws and *Reliability Standards Development Procedure*:

Subsequent versions of these requirements will also be eligible for TFEs if they continue to expressly provide either (i) that compliance with their terms is required where or as technically feasible or (ii) that technical limitations may preclude compliance with the terms of the requirement.² 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, *Reliability Standards Development Procedure*.

² *Order No. 706* at P 157 and note 65 and P 178.

In the version of Appendix 4D posted for comment from August 25 to September 11, 2009 (*see* §IV below), the list of the current Applicable Requirements in §1.3 also included CIP-006-1 Requirement R1.1 and CIP-007-1 Requirement R3. These two requirements have been removed from the list of the current Applicable Requirements in §1.3 of proposed Appendix 4D. Neither of these Requirements contains the phrase “where technically feasible,” “subject to technical limitations” or comparable language.

In Order No. 706, PP 559-560, the Commission discussed allowing a TFE for CIP-006-1 R1.1, and directed NERC to treat any alternative measures for CIP-006-1 R1.1 as a technical feasibility exception to Requirement R1.1, subject to the conditions on TFEs. With respect to CIP-007 Requirement R3, the Commission stated in P 600 of Order No. 706 that “the ERO, through the Reliability Standards development process may choose to allow exceptions to this requirement for technical infeasibility, consistent with the Commission’s determination on technical feasibility above,” *i.e.*, that CIP-007-1 R3 could be modified through the standards development process to add “where technically feasible” or comparable language. However, NERC (after consultation with the Regional Entities) deleted these two Requirements from the list of current Applicable Requirements in §1.3 because (i) they do not contain “technical

infeasibility” language, and (ii) each Requirement specifies that if the Responsible Entity cannot comply with the Requirement, the Responsible Entity shall implement and document the alternative measures or compensating measures it employs:

CIP-006-1 R1.1: [The Responsible Entity shall create and maintain] Processes to ensure and document that all Cyber Assets within an Electronic Security Perimeter also reside within an identified Physical Security Perimeter. Where a completely enclosed (“six-wall”) border cannot be established, the Responsible Entity shall deploy and document alternative measures to control physical access to the Critical Cyber Assets.

CIP-007-1 R3: Security Patch Management — The Responsible Entity, either separately or as a component of the documented configuration management process specified in CIP-003 Requirement R6, shall establish and document a security patch management program for tracking, evaluating, testing, and installing applicable cyber security software patches for all Cyber Assets within the Electronic Security Perimeter(s)

R3.2. The Responsible Entity shall document the implementation of security patches. In any case where the patch is not installed, the Responsible Entity shall document compensating measure(s) applied to mitigate risk exposure or an acceptance of risk.¹⁵

NERC concluded that the use of alternative measures or compensating measures to Strict Compliance with these two Requirements is self-executing per the text of the Requirements. That is, the Responsible Entity can deploy alternative measures (CIP-006-1 R1.1), or compensating measures to mitigate risk (CIP-007-1 R3), and must document those alternative measures or compensating measures (which the Responsible Entity would be required to do under Appendix 4D were these two Requirements to be Applicable Requirements). The Responsible Entity will be subject to audit on the adequacy of its alternative measures and compensating measures and its documentation of those measures, and subject to a finding of a violation if the alternative measures or compensating measures, or the documentation of the

¹⁵ In Order No. 706, at P 600, the Commission directed that the “acceptance of risk” language be removed.

measures, are found to be inadequate. Therefore, based on the text of these two Requirements, there is no need to require Responsible Entities to use the TFE Procedure in Appendix 4D with respect to these two Requirements (and no need to further add to the Regional Entities' workload for processing TFE Requests).¹⁶

Additionally, it is preferable that Appendix 4D be applicable only to Requirements of CIP Standards that use the terms "where technically feasible," "technical limitations," or comparable language. In this way, the CIP Standards Requirements for which a TFE is available can be controlled through the use of the Reliability Standards Development Procedure to add such language to additional Requirements of CIP Standards. In contrast, if Appendix 4D were to allow for TFEs for CIP Standards Requirements that do not contain "where technically feasible" or similar text, it would be necessary to amend Appendix 4D (which would require NERC Board approval and Commission approval) to add each additional CIP Standards Requirement for which a TFE is to be allowed, to the list of Applicable Requirements.

Section 1.4, Obligations of Canadian Entities and Cross-Border Regional Entities, recognizes that the TFE Procedure must be implemented for Canadian Entities consistent with the requirements of applicable Canadian federal and provincial law and the provisions of memoranda of understanding among NERC, cross-border Regional Entities, Canadian Entities and Canadian Applicable Governmental Authorities concerning compliance monitoring and enforcement activities in particular provinces.¹⁷

¹⁶ A number of stakeholders submitted comments on the August 25, 2009 posting of draft Appendix 4D, recommending that CIP-006-1 R1.1 and CIP-007-1 R3 should be removed from the list of current Applicable Requirements, for this same reason.

¹⁷ "Canadian Entity" is defined in §2.3 of Appendix 4D as "A Responsible Entity that is organized under Canadian federal or provincial law."

2. Section 2.0 – Definitions

Section 2.0 establishes definitions of terms used in Appendix 4D. Section 2.0 adopts by reference definitions in the NERC *Glossary of Terms Used in Reliability Standards*, §1.0 of the NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the ROP), and §1501 of the ROP. Defined terms taken from other sources, or created specifically for purposes of Appendix 4D, are set forth in §2.0.¹⁸

3. Section 3.0 – Basis for Approval of a Technical Feasibility Exception

Section 3.1 states the bases on which a TFE may be requested and approved. NERC believes these criteria are consistent with the Commission’s guidance in Order No. 706, including in particular the guidance in PP 178, 180, 182, and 186, and reflect operational considerations, operational reasonableness, and technical safety. Criterion (v) was not expressly mentioned in Order No. 706, but NERC submits it is well within the scope of operational reasonableness.¹⁹

Criterion (vii) in Section 3.1 provides that a TFE may be requested and approved for a “Class-Type TFE.” A “Class-Type TFE” is defined in §2.6 of Appendix 4D as “A type or category of equipment, device, process or procedure for which NERC has determined that a TFE from an Applicable Requirement is appropriate, as set forth on a list of such Class-Type TFEs posted on the NERC Website.” NERC intends to develop and publish a list of common types or

¹⁸ Appendix 4D uses the defined terms “Bulk Electric System” and “Responsible Entity”, rather than, respectively, “Bulk-Power System” and “Registered Entity”, because the terms “Bulk Electric System” and “Responsible Entity” are used in the text of the CIP Standards.

¹⁹ Criterion (v) is that Strict Compliance with the Applicable Requirement “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.”

categories of equipment, devices, processes and procedures for which TFEs to specific Applicable Requirements are appropriate.²⁰

Section 3.2 expresses that “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.”²¹

Section 3.3 specifies that a TFE typically must be requested for, and will be approved only for, a limited duration, until a stated Expiration Date; only under limited, justified circumstances will a TFE Request be approved without a specified Expiration Date, and in such event subject to periodic review to verify continuing justification for the TFE. This provision implements the guidance in PP 192 and 222 of Order No. 706.

4. Section 4.0 – Form, Contents and Submission of a TFE Request

Section 4.0 sets forth the requirements for the form, contents and submission of a TFE Request.

A separate TFE Request must be submitted for each Applicable Requirement pertaining to each Covered Asset for which the Responsible Entity seeks a TFE. However, where the Responsible Entity seeks TFEs from the same Applicable Requirement for multiple, similar Covered Assets (either at the same location or at different locations within the geographic

²⁰ Examples of equipment that NERC anticipates will be on the list of Class-Type TFEs are (1) computer network infrastructure equipment, such as switches or routers, that cannot run anti-malware software as otherwise required by CIP-007-1 R4; and (2) substation field equipment such as protective relays that cannot be configured to provide an Appropriate Use Banner, as otherwise required by CIP-006-1 R2.6.

²¹ The term “compensating measures and/or mitigating measures” used throughout Appendix 4D is intended to represent the measures referred to in the CIP NOPR and Order No. 706 as “mitigation steps,” “mitigation measures” and “mitigation plan.”

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 only request TFEs for a Covered Asset or Assets located within a single Regional Entity. (§4.1)

The TFE Request will consist of two parts, Part A and Part B. Part A is the notification to the Regional Entity that the Responsible Entity is requesting a TFE, and will be submitted to the Regional Entity via its secure electronic portal, using the template form provided by the Regional Entity. The Part A form elicits non-confidential information about the TFE Request that will enable the Regional Entity to receive and catalogue the request.²² Part B will contain the detailed material to support the TFE Request, including the documents, drawings, and other information necessary to provide the details and justification for the requested TFE, and must 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 (which will likely include Confidential Information²³, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information) will be maintained at the Responsible Entity's site, for review during a compliance audit or other CMEP activity. (§4.2)

²² Order No. 706 at P 213. **Attachment 3** to this Petition contains NERC's template Part A Form and Instructions, which are being provided for the Commission's information and understanding and not for purposes of requesting approval of the Part A Form. The Part A Form and Instructions are not part of Appendix 4D. The electronic Part A Form may be modified by individual Regional Entities as necessary to be usable on their respective portals.

²³ Confidential Information is defined in §2.9 to include Critical Energy Infrastructure Information, consistent with the definition of "confidential information" in §1501 of the ROP.

The Part A – Part B approach enables sensitive information to remain at the Responsible Entity’s site, consistent with the guidance in P 214 of Order No. 706.²⁴

Section 4.3.2 lists the Part B Required Information. Among other things, the Part B Required Information includes a statement of the basis on which the Responsible Entity contends the TFE Request should be approved, with supporting documentation; a description of the compensating measures and/or mitigating measures the Responsible Entity proposes to implement, and how they will reduce or prevent adverse impacts on reliable operation, with supporting documentation; the proposed time schedule for implementing the compensating measures and/or mitigating measures; and the Responsible Entity’s proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement, including the proposed Expiration Date of the TFE, or an explanation of why the Responsible Entity contends it will not be possible to achieve Strict Compliance by a specific Expiration Date. In addition, the Part B Required Information includes:

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.²⁵

Although the CIP NOPR and Order No. 706 specified a requirement for approval by the senior manager designated pursuant to CIP-003-1 Requirement R2²⁶, Appendix 4D specifies (in

²⁴ However, 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 information that is protected from disclosure, and (B) the Responsible Entity shall not be required to file any Part B Required Information if, and to the extent that, such filing is prohibited by law. (§4.2(iii))

²⁵ Section 4.3.2, item 14.

²⁶ CIP NOPR at P 79; Order No. 706 at PP 211 and 222.

response to numerous stakeholder comments) that the required statement may be provided by the Senior Manager's Delegate, defined as "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)."²⁷ (§2.11)

Section 4.4 contains provisions pertaining to access by NERC or the Regional Entity to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the Responsible Entity's Part B Required Information.

Section 4.5 specifies that a Responsible Entity should submit a TFE Request at least 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.²⁸ However, because under the CIP Implementation Plan, the "Compliant Date" for some Responsible Entities has already occurred or is December 31, 2009, §4.5 also includes this provision:

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, if it is effective by January 31, 2010, 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.

²⁷ CIP-003-1 R2.3 states: "The senior manager or delegate(s), shall authorize and document any exception from the requirements of the [Responsible Entity's] cyber security policy."

²⁸ This is consistent with the guidance in Order No. 706 at P 213.

As described below, §5.3 contains provisions protecting the Responsible Entity from issuance of notices of Alleged Violation of the Applicable Requirement during the period the TFE Request is under review.

5. Section 5.0 – Review, Acceptance/Rejection, and Approval/Disapproval of TFE Requests

Section 5.1 contains provisions concerning the initial screening of the TFE Request by the Regional Entity for acceptance or rejection. Upon receipt of Part A of a TFE Request, the Regional Entity (i) will assign a unique identifier to the TFE Request and (ii) will review the TFE Request to determine that it is for an Applicable Requirement and that all Part A Required Information has been provided. (§5.1.1)

The Regional Entity will complete this initial screening of the TFE Request within 60 days after receiving it. (§5.1.3(a)) However, if the Regional Entity determines at any time that for a specified period of time, it will be unable to complete initial screenings of TFE Requests within sixty calendar days after receipt, and substantive reviews of TFE Requests within one year after receipt (as provided in §5.2.2), the Regional Entity, based on consultation with NERC, shall establish an alternative time period objective and work plan for completing initial screenings and substantive reviews of TFE Requests during the specified period of time. (§5.1.3(b)) This provision has been included because at this time, NERC and the Regional Entities have no basis for estimating the volumes of TFE Requests that they may receive, and thus the resources that will be required to process them within the time periods specified in §5.1.3(a) and §5.2.2.

Further, if the Regional Entity is unable to complete its initial screening within 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 calendar day after the Regional Entity received the TFE Request and continuing thereafter in accordance with Section 5.3. (§5.1.3(c)) This provision protects the Responsible Entity if the Regional Entity is unable to complete initial screening of the TFE Request within 60 days.

Upon completing its initial screening of the TFE Request, the Regional Entity will send a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request is either accepted (§5.1.4) or rejected (§5.1.5). Acceptance enables the Responsible Entity to rely on the TFE, without being subject to a notice of Alleged Violation, or penalties or sanctions, for noncompliance with the Applicable Requirement, until the Regional Entity completes its substantive review of the TFE Request.²⁹ If the TFE Request is rejected, the notice must specify an Effective Date that must be no less than 31 days after the date of issuance of the notice. (§5.1.5) Further, if the Regional Entity rejects the TFE Request because not all Part A Required Information was provided, the notice must identify the Part A Required Information that was not provided. The Responsible Entity may then resubmit the TFE Request with all Part A Required Information included. If the Responsible Entity does so, it 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. There is a limit of one such resubmission. (§5.1.6)

Section 5.2 contains the procedures for the Regional Entity's substantive review of the TFE Request (assuming it is accepted in initial screening), to determine if the TFE should be

²⁹ This is consistent with the guidance in Order No. 706 at P 217.

approved or disapproved. The substantive review is to be conducted in accordance with established compliance monitoring processes under the CMEP, such as a Compliance Audit or Spot Check. (§5.2.1) This is consistent with the program as envisioned by the Commission in Order No. 706.³⁰ The Regional Entity is to complete its substantive review of the TFE Request, and determine if it should be approved or disapproved, within one year after the TFE Request is submitted (or within an alternative time period objective as specified in a work plan established under §5.1.3(b), discussed above).³¹ The Regional Entity may also extend the one-year time period for individual TFE Requests by issuing a notice stating the revised date by which the Regional Entity will approve or disapprove the TFE Request. (§5.2.2)

Upon completing its substantive review of the TFE Request, the Regional Entity will issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request is approved (§5.2.4) or disapproved (§5.2.5). A notice of disapproval shall state the reasons for disapproval, and shall state any revisions to the TFE Request the Regional Entity is able to identify that, if made by the Responsible Entity, would result in approval of the TFE Request. If the Responsible Entity submits an amended TFE Request incorporating the revisions set forth in the notice of disapproval, then the Regional Entity shall issue a notice approving the revised TFE Request. (§5.2.5)

If the TFE Request is disapproved, the notice of disapproval shall state an Effective Date no earlier than the sixty-first day following the date of the notice. Following the Effective Date

³⁰ Order No. 706 at PP 214 and 222.

³¹ Although a one-year time period was not mentioned in Order No. 706, this provision is consistent with the guidance in Order No. 706, at P 215, that “initial audits of technical feasibility exceptions should be expedited, i.e., performed earlier than otherwise, including moving the audit to an earlier year,” and that “responsible entities claiming [TFEs] should receive higher priority when determining which entities to audit.”

(and assuming the Responsible Entity's Compliant Date has been reached), the Responsible Entity is subject to issuance of a notice of Alleged Violation with respect to the Applicable Requirement that was the subject of the disapproved TFE Request, unless the Responsible Entity has submitted an amended TFE Request in accordance with §5.2.5 (as described above), or has achieved Strict Compliance with the Applicable Requirement. A notice of Alleged Violation will be processed in accordance with §§5.0, 6.0 and 7.0 of the CMEP. (§5.2.6)

Section 5.3 contains provisions protecting the Responsible Entity from imposition of findings of violations, or penalties or sanctions, for violation of the Applicable Requirement while the TFE Request is under review and (if approved) while it is in effect:

5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request 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, 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,

to:
- (ii) (A) 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 is disapproved, whichever is applicable.

Provided, that (i) while a TFE Request is undergoing initial screening, 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 during the period on and after the TFE Request was submitted; and (ii) if the TFE Request is accepted, 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 accepted TFE Request, during

the period from submission of the TFE Request to the date of the Regional Entity's notice that the TFE Request is accepted.

6. Section 6.0 – Implementation and Reporting by the Responsible Entity Pursuant to an Approved TFE

If the TFE Request is approved, the Responsible Entity will be required to implement the compensating measures and/or mitigating measures as described, and in accordance with the time schedule in, the approved TFE. (§6.1) The Responsible Entity is also required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirement and eliminating the TFE, as set forth in the approved TFE. (§6.2)³² The Responsible Entity will be required to submit quarterly reports to the Regional Entity on the Responsible Entity's progress in these two areas. (§§6.3 – 6.4) Additionally, if the Expiration Date of the TFE is more than one year after the TFE Request was submitted, or if the TFE has no Expiration Date, the Responsible Entity must submit annual reports to the Regional Entity supporting the continuing need and justification for the TFE. (§6.5) Both the quarterly reports and any annual reports must include a statement, signed by the Senior Manager or Delegate, that he or she has read, and approved the submission of, the report.³³ (§6.6)

Failure to implement the above steps in accordance with the specified time schedule will have adverse consequences for the Responsible Entity. If the Responsible Entity fails to implement or maintain a compensating measure or mitigating measure; fails to conduct research or analysis towards achieving Strict Compliance in accordance with the approved TFE; or fails to

³² This is consistent with the guidance in Order No., 706, at PP 192 and 222, that use of a TFE by a Responsible Entity must be accompanied by a remediation plan and timeline for elimination of the TFE.

³³ These requirements are consistent with the guidance in Order No. 706 that the Responsible Entity must have a remediation plan and timeline for eliminating reliance on the TFE, unless the Responsible Entity can justify the inability to establish a date certain for elimination of the TFE. Order No. 706 at PP 192 and 222.

submit one or more reports by the due date, the Responsible Entity must file a Self Report pursuant to §3.5 of the CMEP, and will be subject to issuance of a notice of Alleged Violation for noncompliance with the Applicable Requirement that is the subject of the TFE. (§6.8)

7. Section 7.0 – Amendment of a TFE Request or Approved TFE

Sections 7.1 and 7.2 contain provisions for the submission by the Responsible Entity of an amendment to a TFE Request that is under review (§7.1), or a proposed amendment to an approved TFE (§7.2), and for the review and acceptance or rejection and approval or disapproval of the amendment. Amendments to an approved TFE may propose (for example) revisions to the compensating measures and/or mitigating measures or to the implementation schedule, or to the Expiration Date, and must include submission of the Part A Required Information, as amended, availability of the Part B Required Information, as amended, and a written explanation of the amendment and the reasons and purpose for it. (§7.2.1)

8. Section 8.0 – Compliance Audit Requirements Relating to Approved TFE

After approval of a TFE Request, Compliance Audits of the Responsible Entity prior to the Expiration Date shall include audit of the Responsible Entity's (i) implementation and maintenance of the compensating measures and/or mitigating measures specified in the approved TFE, and (ii) implementation of steps and conduct of research and analyses towards achieving Strict Compliance with the Applicable Requirement, both in accordance with the time schedule in the approved TFE. (§8.1) Further, the first Compliance Audit of the Responsible Entity after the Expiration Date shall include audit of the Responsible Entity's Strict Compliance with the Applicable Requirement that was the subject of the TFE. (§8.2)

9. Section 9.0 – Termination of an Approved TFE

An approved TFE terminates on its Expiration Date, unless it is terminated earlier by the Responsible Entity or by the Regional Entity. (§9.1) The Responsible Entity may terminate a 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. (§9.2)

A Regional Entity or NERC may terminate an approved TFE based on the results of a Spot Check initiated and conducted to determine if the 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 the approved TFE should be terminated or revised, and opportunity for the Responsible Entity to submit comments on the draft report³⁴, the Regional Entity or NERC, if it has determined the approved TFE should be terminated or revised, will issue a notice of termination to the Responsible Entity stating the Effective Date of termination. The Effective Date must be no earlier than the sixty-first day after the date of issuance of the notice of termination. (§9.3) The Responsible Entity will not be subject to findings of violations, or to penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement, until the Effective Date of the termination. (§9.4)

10. Section 10.0 – Hearings and Appeal Process for Responsible Entity

Appendix 4D establishes no separate hearing or appeal processes with respect to rejection or disapproval of a TFE Request or termination or revision of an approved TFE, but rather relies on the existing hearing and appeal processes established under the CMEP (including Attachment

³⁴ Providing the registered entity an opportunity to comment on a draft Spot Check report is required by the Spot Check procedure in §3.3.1 of the CMEP. In the context of proposed termination or revision of an approved TFE, this process step provides an opportunity for the Responsible Entity to respond to the proposed termination or revision of the TFE.

2, Hearing Procedures) and the ROP. Specifically, 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 approved TFE, is entitled to a hearing before the Regional Entity Hearing Body if the Responsible Entity contests the notice of Alleged Violation, proposed penalty or sanction, or any Mitigation Plan components.³⁵ (§10.0) Section 10.0 specifies that the Responsible Entity may raise issues relating to the rejection or 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. Section 11.0 – Confidentiality of TFE Requests and Related Information

Section 11.1 provides that the submission, review, acceptance or rejection, and approval or disapproval of TFE Requests, and the implementation and termination of approved TFEs, shall be maintained as confidential. Section 11.1 includes a detailed list of documents that may be created in the TFE process which are Confidential Information and must be treated as such in accordance with §1500 of the ROP. However, NERC’s Annual Report (see III.C.12 below) is to be filed with Applicable Governmental Authorities on a public basis; accordingly, the Annual Report must be prepared so that no Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information is disclosed. (§11.2)

12. Section 12.0 – Annual Report to FERC and Other Applicable Governmental Authorities

Section 12.1 provides for NERC to submit an Annual Report to the Commission that provides a wide-area analysis regarding the use of TFEs and the impact on the reliability of the

³⁵ If NERC is the Compliance Enforcement Authority with respect to the Responsible Entity’s compliance with the Applicable Requirement, the hearing would be before the NERC Compliance and Certification Committee. (§10.0)

Bulk Electric System, as required by PP 220-221 of Order No. 706. NERC will prepare the Annual Report in consultation with the Regional Entities. Section 12.1 details the information to be provided in the Annual Report, including information on the frequency of use of TFEs, the general nature of submitted TFE Requests, the Applicable Requirements covered by TFE Requests, broad categories of circumstances or justifications on which TFE Requests have been submitted and approved, categorization of the compensating measures and mitigating measures that have been employed, assessments of the wide-area impacts on Bulk Electric System reliability of the TFEs that have been approved and the compensating and mitigating measures that have been employed, and discussion of efforts to eliminate future reliance on TFEs.³⁶

NERC's first Annual Report will cover the period through the end of the fourth full calendar quarter ending after the effective date of Appendix 4D, and will be filed with the Commission and other Applicable Governmental Entities no later than 90 days after the end of that quarter. (§12.2) The Annual Report is to be a public document. (§12.3)

IV. APPROVAL PROCESS FOR THE ROP AMENDMENTS

Article XI, §2 of the NERC Bylaws specifies that proposals for adoption, amendment or repeal of NERC Rules of Procedure must be posted on NERC's Website for comment for at least 45 days before submission to the NERC Board, must then be approved by the Board, and then submitted to the Commission for approval. Section 1402 of the NERC ROP similarly sets forth requirements for opportunity for comment, Board approval and Commission approval. The requirements of Article XI, §2 of the Bylaws and Section 1402 of the ROP were followed in obtaining approval of the proposed amendments to the ROP that are the subject of this Petition.

³⁶ This information is consistent with the contents of the Annual Report indicated by the Commission in Order No. 706 at PP 220-221.

Following issuance of Order No. 706, NERC established a standards drafting team of industry stakeholders to address the revisions to the CIP Standards indicated by that Order. Among other topics, the standards drafting team considered the components of a procedure for requesting, receiving and relying on TFEs. The work of the standards drafting team was used to prepare an initial draft of a TFE Procedure (Appendix 4D) which was posted on the NERC website for comment from March 16 to April 30, 2009. Comments were received from over 50 entities, including registered entities, industry groups and associations, consulting firms, and Regional Entities or Regional Entity committees. Based on consideration of the comments and discussions with the Regional Entities, NERC staff revised the proposed TFE Procedure. A revised version of Appendix 4D was posted on the NERC website from August 25 through September 11, 2009. In response to the second posting, thirty-three sets of comments were received, again from registered entities, industry groups and associations, consulting firms, and Regional Entities or Regional Entity committees. NERC staff considered the second round of comments, engaged in additional discussions with the Regional Entities concerning the draft TFE Procedure, and arrived at a final proposed Appendix 4D which was submitted (along with proposed new §412 of the ROP) to the NERC Board for approval.

The NERC Board approved proposed §412 and Appendix 4D at a meeting by conference call on October 16, 2009. The NERC Board directed one change be made to the version of Appendix 4D submitted to it for approval, namely, the addition of a provision establishing a submission window through January 31, 2010, for TFE Requests by Responsible Entities whose Compliant Date for the Applicable Requirement was December 31, 2009 or earlier. This direction resulted in addition of the underscored sentence to §4.5 of Appendix 4D shown below:

4.5 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, if it is effective by January 31, 2010, 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.

V. INTERIM TFE PROCESSES

For the Commission's information, in this section NERC describes the steps it has taken to implement the procedures embodied in Appendix 4D on an interim basis, pending the receipt of approval from the NERC Board and the Commission of proposed §412 of the ROP and Appendix D as ERO rules. Specifically, on July 1, 2009, NERC issued NERC Compliance Process Bulletin #2009-006, "Interim Approach to Technical Feasibility Exceptions," to provide guidance to Regional Entities and affected registered entities concerning the applicability and implementation of NERC CIP Standards that refer to "technical feasibility" and/or "technical limitations," pending the adoption of a permanent program to address TFEs.³⁷ Compliance Process Bulletin #2009-006 was intended specifically to provide guidance for registered entities required to be "Compliant" with CIP Standards by July 1, 2009, pursuant to the NERC CIP Implementation Plan. Compliance Process Bulletin #2009-006 provided a process for such registered entities to submit requests for TFEs to their Regional Entities, along with guidance on the types of circumstances that could be offered to justify such a request and information that

³⁷ Available at http://www.nerc.com/files/2009-006_Public%20Notice-V1.pdf.

should be submitted with the request. The Compliance Process Bulletin specified that registered entities should submit such requests at least 30 days prior to the on-site portion of a Compliance Audit or Spot Check that would address a CIP Standards requirement for which the registered entity sought to rely on a TFE.

Subsequently, on October 12, 2009, NERC issued NERC Compliance Process Bulletin #2009-007, to provide guidance to registered entities concerning the applicability and implementation of NERC CIP Standards that provide for TFEs, pending adoption of a permanent TFE program.³⁸ Compliance Process Bulletin #2009-007 specifies that effective immediately, TFE requests are to be submitted on an interim basis in conformance with the proposed Appendix 4D to the NERC ROP (*i.e.*, the same Appendix 4D that is the subject of this Petition), referred to in the Compliance Process Bulletin as the “Interim TFE Rules.” A copy of the Interim TFE Rules, and the template Part A Form and Instructions, were posted as attachments to the Compliance Process Bulletin.

NERC believed it was essential to initiate the interim TFE processes in Compliance Process Bulletins #2009-006 and 2009-007 in light of the fact that, pursuant to the CIP Implementation Plan, some registered entities were required to be “Compliant” with CIP Standards by July 1, 2009, and other registered entities are required to be “Compliant” by December 31, 2009. Although NERC has submitted proposed new §412 of the ROP and proposed Appendix 4D to the ROP to the Commission for approval as ERO rules, as required by §215(f) of the FPA and 18 C.F.R. §39.10, to establish a permanent TFE program, NERC believes the Commission’s direction to NERC, in Order No. 706, “to develop a set of conditions or criteria that a responsible entity must follow when relying on the technical feasibility

³⁸ Compliance Process Bulletin #2009-007 was revised and reposted as Version 1.1 on October 13, 2009, to correct typographical errors.

exception contained in specific Requirements of the CIP Reliability Standards,”³⁹ provided sufficient authority to implement the interim TFE procedures.

VI. CONCLUSION

For the reasons stated in this filing, the North American Electric Reliability Corporation respectfully requests that the Commission, after providing notice and opportunity for public comment in accordance with §215(f) of the FPA and 18 C.F.R. §39.10, issue an order, by on or about January 21, 2010, approving the proposed amendments to the NERC Rules of Procedure presented herein.

Respectfully submitted,

/s/ David N. Cook
Rick Sergel
President and Chief Executive Officer
David N. Cook
Vice President and General Counsel
North American Electric Reliability
Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

/s/ Owen E. MacBride
Owen E. MacBride
Debra Ann Palmer
Schiff Hardin LLP
1666 K Street, N.W., Suite 300
Washington, DC 20036-4390
(202) 778-6400
(202) 778-6460 – facsimile
omacbride@schiffhardin.com
dpalmer@schiffhardin.com
Rebecca J. Michael, Assistant General Counsel
North American Electric Reliability Corporation
1120 G Street, N.W., Suite 990
Washington, D.C. 2005-3801
(202) 393-3998
(202) 393-3995 – facsimile
Rebecca.michael@nerc.net

³⁹ Order No. 706 at P 178.

ATTACHMENT 1

**PROPOSED NEW SECTION 412
OF THE NERC RULES OF PROCEDURE**

**Proposed New Section 412 to the
NERC Rules of Procedure**

412. Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards

A registered entity that is subject to a requirement of a NERC critical infrastructure protection reliability standard for which technical feasibility exceptions are permitted, may request a technical feasibility exception to the requirement, and the request will be reviewed, approved or disapproved, and if approved, implemented, in accordance with the NERC *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standard*, Appendix 4D to these Rules of Procedure.

ATTACHMENT 2

PROPOSED NEW APPENDIX 4D

TO THE NERC RULES OF PROCEDURE,

“PROCEDURE FOR REQUESTING AND RECEIVING

TECHNICAL FEASIBILITY EXCEPTIONS TO

NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS”

October 28, 2009

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

APPENDIX 4D TO THE RULES OF PROCEDURE

TABLE OF CONTENTS

1.0. INTRODUCTION	1
1.1. Purpose	1
1.2. Authority	1
1.3. Scope	1
1.4. Obligations of Canadian Entities and Cross-Border Regional Entities	2
2.0. DEFINITIONS	2
3.0. BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION	4
4.0. FORM, CONTENTS AND SUBMISSION OF A TFE REQUEST	5
4.1. Separate Submission for Each TFE Request	5
4.2. Form and Format of TFE Request	6
4.3. Required Information to be Included in the TFE Request	6
4.4. Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information	9
4.5. Submission of TFE Request in Advance of Compliant Date	9
5.0. REVIEW, ACCEPTANCE/REJECTION AND APPROVAL/DISAPPROVAL OF TFE REQUESTS	9
5.1. Initial Screening of TFE Request for Acceptance	9
5.2. Substantive Review of TFE Request for Approval or Disapproval	11
5.3. No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request is Being Reviewed	12
6.0. IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE	13
7.0. AMENDMENT OF A TFE REQUEST OR APPROVED TFE	14
7.1. Amendment of a Pending TFE Request	14

7.2	Amendment of an Approved TFE	15
8.0	COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE	15
9.0	TERMINATION OF AN APPROVED TFE REQUEST	16
10.0	HEARINGS AND APPEAL PROCESS FOR RESPONSIBLE ENTITY	16
11.0	CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION	16
12.0	ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES	17
12.1	Contents of Annual Report	17
12.2	Due Date for Annual Reports	19
12.3	Annual Report to be a Public Document	19
12.4	Responsible Entities Must Cooperate in Preparation of Annual Report	19

**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, where the text of the requirement provides for deviation from Strict Compliance with its terms on such grounds. 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.¹

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 expressly provide either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement. As of the effective date of this Appendix, in the United States the Applicable Requirements are:

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

CIP-007-1: R2.3, R4, R5.3, R 5.3.1, R 5.3.2, R 5.3.3, R6 and R6.3

Subsequent versions of these requirements will also be eligible for TFEs if they continue to expressly provide either (i) that compliance with their terms is required where or as technically feasible or (ii) that technical limitations may preclude compliance with the terms of the requirement.² 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, *Reliability Standards Development Procedure*.

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

² *Order No. 706* at P 157 and note 65 and P 178.

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

2.1 Annual Report: The annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 12.0 of this Appendix.

2.2 Applicable Requirement: A requirement of a CIP Standard that expressly provides either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement.

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

2.4 CIP Standard: Any of NERC Standards CIP-002 through CIP-009.

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 Class-Type TFE: A type or category of equipment, device, process or procedure for which NERC has determined that a TFE from an Applicable Requirement is appropriate, as set forth on a list of such Class-Type TFEs posted on the NERC Website.

2.7 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.

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

2.9 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) cybersecurity 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.

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

2.11 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).

2.12 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.

2.13 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.

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

2.15 FERC: The United States Federal Energy Regulatory Commission.

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

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

2.18 NRC: The United States Nuclear Regulatory Commission.

2.19 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.

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

2.21 Part B Required Information: Required Information that is to be provided in Part B of a Responsible Entity’s TFE Request.

2.22 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.

2.23 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.

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

2.25 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.

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

2.27 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.

2.28 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 when 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 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 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, the related Facility and the Bulk Electric System of continuing to operate with the existing equipment can be shown to be minimal; or

(vii) is a Class-Type TFE as posted by NERC on the NERC Website.

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.

3.3. 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 continuing justification for the TFE.

4.0. FORM, CONTENTS AND SUBMISSION OF A TFE REQUEST

4.1. Separate Submissions for Each TFE Request

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 the Responsible Entity seeks TFEs 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

A TFE Request shall consist of two parts:

(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. NERC will use a portion or subset of the Part A Required Information to develop its Annual Report to the Applicable Governmental Authorities and to provide oversight to the TFE process.

(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 by the Regional Entity in its template referred to in Section 4.2. Failure to provide all Part A Required Information will result in rejection of the TFE Request as incomplete.

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 5 through 10 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. The Applicable Requirement that is the subject of the TFE Request.

4. What Class-Type TFE the requested TFE falls within, if applicable.
5. 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 (however, if the TFE Request is for a Class-Type TFE, information in response to item (ii) is not required).
6. 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.
7. An assessment of the impacts on reliable operation of (i) the Covered Asset(s) and (ii) 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. 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.
13. 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 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.
14. 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.

4.4 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, 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 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, if it is effective by January 31, 2010, 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

5.1 Initial Screening of TFE Request for Acceptance or Rejection

5.1.1. Upon receipt of Part A of a TFE Request, 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.

5.1.2. The unique identifier assigned to the TFE Request 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 geographic boundaries the Covered Asset is located³; and “ZZZZZ” is the sequential number of the TFE Requests received by the Regional Entity in that year. If the TFE Request is amended or resubmitted, “-AZ” will be added to the end of the identifier, where “Z” is the number of the amendment to the TFE Request.

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 (61st) 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.

³ 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); WECC (Western Electricity Coordinating Council); and NERC (applicable where NERC, rather than a Regional Entity, is the Compliance Enforcement Authority for the Responsible Entity).

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 after the date of issuance of 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 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 for Approval or Disapproval

5.2.1 The Regional Entity shall conduct a substantive review of an accepted TFE Request 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.

5.2.2. The Regional Entity shall complete its substantive review of the TFE Request and make its determination of whether the TFE Request 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 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 time period for individual TFE Requests 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.

5.2.3. The Regional Entity must either approve the TFE Request in its entirety or disapprove the TFE Request in its entirety, even if the TFE Request is for two or more Covered Assets subject to the same Applicable Requirement.

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

5.2.5. If the Regional Entity disapproves the TFE Request, the Regional Entity shall issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request is disapproved and stating the reasons for the disapproval. In its notice disapproving a TFE Request, the Regional Entity shall state any revisions to the TFE Request it is able to identify 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 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 shall state an Effective Date, which shall be no earlier than the sixty-first (61st) calendar day following the date of 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, 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, the Regional Entity shall submit a report to NERC setting forth the basis on which the Regional Entity approved or disapproved the TFE Request.

5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request 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, 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,

to:

- (ii) (A) 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 is disapproved, whichever is applicable.

Provided, that (i) while a TFE Request is undergoing initial screening, 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 during the period on and after the TFE Request was submitted; and (ii) if the TFE Request is accepted, 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 accepted TFE Request, during the period from submission of the TFE Request to the date of the Regional Entity’s notice that the TFE Request is accepted.

6.0 IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE

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 the TFE has been approved with no 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 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 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. 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.

6.7. 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 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. 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.

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 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 on its Expiration Date, unless it is terminated at an earlier date pursuant to this Section 9.0.

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 stating the Effective Date of termination of the approved TFE. The Effective Date shall be no earlier than the sixty-first (61st) calendar day after the date of issuance of 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 or 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 CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION

11.1. Except as expressly stated in this Section 11.0, the submission, review, acceptance/rejection, and approval/disapproval of TFE Requests, 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 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, including (without limiting the scope of this provision) in connection with reviewing a TFE Request 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 approved TFE.

11.2. The Annual Report to be submitted by NERC pursuant to Section 12.0 shall be filed with Applicable Governmental Authorities on a public basis and shall not be considered Confidential Information. NERC shall prepare the Annual Report in such a manner that no Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information is disclosed in the Annual Report.

12.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES

12.1. 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 number of approved TFEs that are still in effect as of on or about the date of the Annual Report; (C) the numbers of approved TFEs that reached their Expiration Dates or were terminated during the preceding year; and (D) the number 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 and the Applicable Requirements covered by 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 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;
- (v) 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;
- (vi) 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

(vii) Discussion of efforts to eliminate future reliance on TFEs.

12.2. Due Date for Annual Reports

The first Annual Report shall cover the period through the end of the fourth full calendar quarter ending after the effective date of this Appendix, 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.

12.3. Annual Report to be a Public Document

The Annual Report shall 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.

12.4. 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 3

FOR INFORMATION —

TEMPLATE PART A FORM AND INSTRUCTIONS

Complete and submit the following information:

TFE Request Identification Number (Regional Entity use only):

Responsible Entity Name:

Responsible Entity NERC Compliance Registry ID:

Request Submittal Date:

Is this an amended TFE Request? [Select One...](#)

If yes, what was the original TFE Request Identification Number?

Technical Contact:

Name:

Mailing Address:

Phone Number:

Extension:

Fax Number:

E-mail:

Applicable Requirement for which the TFE is being requested: [Select One...](#)

Number of Covered (Cyber) Asset(s) for which the TFE is being requested:

Is a similar TFE Request being filed with other regions? [Select One...](#)

If yes, which regions will this TFE (with different Covered Assets) be submitted to?

FRCC: [Select One...](#)

SERC: [Select One...](#)

MRO: [Select One...](#)

SPP RE: [Select One...](#)

NPCC: [Select One...](#)

Texas RE: [Select One...](#)

RFC: [Select One...](#)

WECC: [Select One...](#)

For which type(s) of equipment, process, or procedure at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement is the TFE is requested? If relying upon a NERC Class-Type TFE, select "Class-Type TFE" and enter the Class-Type TFE Identifier below:

[Select one or more types](#)

If Other, please briefly describe or if Class-Type TFE, enter the NERC Class-Type TFE Identifier:

What is the basis for the TFE Request? [Select One...](#)

Provide a brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement:

What is the estimated impact on reliable operation of the Bulk Electric System of the Responsible Entity if the compensating and mitigating measures for the covered asset(s) are not sufficient and cyber security is compromised? [Select One...](#)

Provide a brief summary of the compensating and/or mitigating measures that are planned or have been implemented:

Have the compensating and/or mitigating measures been fully implemented? [Select One...](#)

If Yes, what is the actual completion date for implementing all necessary compensating and/or mitigating measures?

If No, what is the proposed date for implementing all necessary compensating and/or mitigating measures?

Is there a proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement? [Select One...](#)

If Yes, what is the proposed Expiration Date?

And, what is the plan for terminating the TFE? [Select One...](#)

Provide a brief explanation for "Other":

If No, explain why an open-ended TFE is requested:

Is this TFE Request supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information? [Select One...](#)

Does the Responsible Entity understand and agree to the requirement to submit timely periodic and other reports as specified in the approved TFE? The reports that the Responsible Entity may be required to submit following approval of the TFE request to the applicable Regional Entity include: (i) reports on the Responsible Entity's progress in implementing and maintaining the compensating measures and/or mitigating measures the Responsible Entity is adopting pursuant to the approved TFE; (ii) reports on the Responsible Entity's progress in implementing steps and/or conducting research and/or analysis to achieve Strict Compliance with the Applicable Requirement; and (iii) reports supporting the continued justification for the approved TFE.

[Select One...](#)

Include a statement, signed and dated by the Senior Manager or Delegate, asserting 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 specified in the Part A Instructions.

Technical Feasibility Exception Request – Part A Instructions

Applicable to NERC Reliability Standards CIP-002-1 through CIP-009-1

Please complete the information in the Technical Feasibility Exception Request – Part A form. The information provided on the Part A form should be summary in nature. Comprehensive responses including supporting documents should be included in the Part B Required Information.

Complete responses are essential to the evaluation and approval of the TFE Request. All submitted TFE Requests and supporting documentation will be protected from unauthorized access and disclosure by the Regional Entity recipient per NERC Rules of Procedure Section 1500.

TFE Requests are limited to those requirements in the Cyber Security Standards (CIP-002-1 through CIP-009-1) where technical feasibility or similar language is found (“Applicable Requirements”). As of October 1, 2009, the Applicable Requirements are:

- CIP-005-1, Requirements R2.4, R2.6, R3.1, and R3.2
- CIP-007-1, Requirements R2.3, R4, R5.3, R5.3.1, R5.3.2, R5.3.3, R6, and R6.3

Applicability is specific to the requirement and is not automatically conveyed to any sub-requirements of the Applicable Requirement.

One TFE Request may be submitted for multiple Covered Assets that are subject to an Applicable Requirement, provided the Covered Assets:

- are located within the same Regional Entity,
- have a common basis of technical infeasibility,
- will employ the same compensating measures and/or mitigating measures,
- will be subject to a common implementation plan to achieve Strict Compliance with the Applicable Requirement, and
- have the same Expiration Date for the TFE.

An example would involve multiple device types (e.g. printers, card access controllers, and network switches) that cannot support the required password length, and are compensated for in the same way.

Definitions

Note: Capitalized terms may appear in the NERC *Glossary of Terms Used in Reliability Standards*, the NERC Uniform Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure), or in the list of Definitions below. The Definitions below are from Section 2.0 of the NERC TFE Procedure.

Applicable Requirement: A requirement of a CIP standard that expressly provides either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement.

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.

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

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) cybersecurity 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 the NERC TFE Procedure.

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

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).

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.

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

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.

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)) or any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost was the Required Information to be placed into the public domain.

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.

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.

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

Technical Feasibility Exception (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 shown below.

TFE Request: A request submitted by a Responsible Entity in accordance with the NERC TFE Procedure for an exception from Strict Compliance with an Applicable Requirement.

BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION

A Responsible Entity may request and obtain approval for a TFE when 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:

1. is not technically possible, or is precluded by technical limitations; or
2. 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
3. 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 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
4. would pose safety risks or issues that outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or
5. 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
6. would require the incurrence of costs that 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, the related Facility and the Bulk Electric System of continuing to operate with the existing equipment can be shown to be minimal or

7. satisfies the criteria for a Class-Type TFE as posted by NERC on the NERC Website.

GENERAL INSTRUCTIONS

1. All questions must be answered. Failure to answer a question will result in rejection of the TFE Request. Entities will have thirty (30) days after the first rejection to remedy any issues and resubmit the TFE Request.
2. All text fields are limited to 255 characters.
3. Drop-down lists are indicated by the text “Select One...” You must select a response from the list provided.

SPECIFIC QUESTION INSTRUCTIONS

Technical Contact: Enter the contact information for Responsible Entity’s designated contact person for the TFE Request.

Number of Covered (Cyber) Asset(s) for which the TFE is being requested: Enter the total number of Covered Assets covered by this TFE Request. Do not include Covered Assets located within any other Regional Entities.

Is a similar TFE Request being filed with other Regional Entities? Indicate Yes or No. If your answer is “Yes,” identify the other Regional Entities that will receive a similar TFE Request(s). This information will be used to coordinate the screening and evaluation of the TFE Requests by all the Regional Entities to which it is submitted.

Provide a brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement: Provide a summary-level explanation of the technical infeasibility issue and why you cannot achieve Strict Compliance with the Applicable Requirement. A comprehensive explanation, including supporting documents, should be included in your Part B Required Information.

Provide a brief summary of the compensating and/or mitigating measures that are planned or have been implemented: Provide a summary-level overview of how you have or will compensate and/or mitigate the inability to achieve Strict Compliance with the Applicable Requirement. A comprehensive description of the compensating measures and/or mitigating measures and the Responsible Entity’s plan for implementing them, including supporting documents, should be included in your Part B Required Information.

Is this TFE Request supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information? This question refers, in the United States, to information classified by a US Government Agency (refer to Executive Order 12958 – Classified National Security Information, as Amended), information protected under 10 CFR 73.21-73.23 – Protection of Safeguards Information, and information asserted by a US Government Agency to be protected from Freedom of Information Act requests in accordance with 5 U.S.C. § 552(b); or to information subject to similar statutes and regulations applicable to Responsible Entities in Canada. Additional information on Classified National Security Information can be found at: <http://www.archives.gov/isoo/>. Information on comparable Canadian requirements can be found here: <http://www.csis-scrs.gc.ca/nwsrm/bckgrndrs/bckgrndr12-eng.asp>. Additional information on the protection of NRC Safeguards Information can be found at: <http://www.nrc.gov/reading-rm/doc-collections/cfr/part073/>. Information on FOIA exemptions can be found at: <http://www.osec.doc.gov/omo/FOIA/exemptions.htm>.

Does the Responsible Entity understand and agree to the requirement to submit timely periodic reports? Entities are required to submit quarterly progress reports concerning (i) implementation and maintenance of the compensating measures and/or mitigating measures, and (ii) implementation activities towards achieving Strict Compliance with the Applicable Requirement by a specified Expiration Date for the TFE. Additionally, if the proposed Expiration Date is more than one 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 will be required to submit annual reports on the continued need and justification for the TFE. Selecting “Yes” to this question affirms the Responsible Entity understands these requirements. The Responsible Entity’s proposed plan and schedule for achieving Strict Compliance with the Applicable Requirements, and proposed Expiration Date (or justification for no Expiration Date), will be included in the Responsible Entity’s Part B Required Information.