

March 9, 2016

VIA OVERNIGHT MAIL

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

Re: North American Electric Reliability Corporation Notice of Filing of Rules of Procedure Revisions

Dear Ms. Young:

The North American Electric Reliability Corporation submits this “Notice of Filing of Rules of Procedure Revisions.”

Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Teresina Stasko

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**BEFORE THE
NATIONAL ENERGY BOARD**

**NORTH AMERICAN ELECTRIC)
RELIABILITY CORPORATION)**

NOTICE OF FILING OF RULES OF PROCEDURE REVISIONS

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TABLE OF CONTENTS

I.	BACKGROUND	2
II.	PROPOSED REVISIONS	3
	A. November 4 Order	3
	B. Proposed Revisions Development	4
III.	PROPOSED REVISIONS SUMMARY	5
	A. Section 401: Scope of the NERC CMEP	5
	B. Appendix 4C Section 3.5A: Self-Logging	5
	C. Appendix 4C Section 5.1: Notice of Possible Violation	6
	D. Appendix 4C Section 9.2: Retention Requirements	6
Attachment 1A	Clean Version of Rules of Procedure Section 401	
Attachment 1B	Redlined Version of Rules of Procedure Section 401	
Attachment 2A	Clean Version of Rules of Procedure Appendix 4C	
Attachment 2B	Redlined Version of Rules of Procedure Appendix 4C	

- Attachments 1A Clean and 1B Redlined versions of Rules of Procedure Section 401
- Attachments 2A Clean and 2B Redlined versions of Rules of Procedure Appendix 4C

I. BACKGROUND

On July 16, 2015, NERC submitted an informational filing describing the Reliability Assurance Initiative. Through this initiative, the Electric Reliability Organization (“ERO”) Enterprise² designed and tested changes to its compliance monitoring and enforcement activities to focus on higher reliability risk areas. In a February 19, 2015, order,³ FERC approved NERC’s implementation of the risk-based CMEP,⁴ and directed NERC, among other things, to propose revisions to the Rules of Procedure that reflect the risk-based approach to compliance monitoring and enforcement. On July 16, 2015, NERC submitted a filing of revisions to the Rules of Procedure to recognize risk-based CMEP processes and concepts, as directed by FERC. The November 4 Order conditionally accepted the July 6, 2015, compliance filing, subject to NERC proposing additional revisions to the Rules of Procedures to reflect certain components of the risk-based CMEP.

The proposed changes include input from Regional Entities, as well as additional input from industry responses submitted after NERC posted the revisions for comment on November 30, 2015.

² The term “ERO Enterprise” refers to NERC and the eight Regional Entities.

³ *N. Am. Elec. Reliability Corp., Order on Elec. Reliability Org. Reliability Assurance Initiative and Requiring Compliance Filing*, 150 FERC ¶ 61,108 (2015).

⁴ In the February 19, 2015 Order, FERC approved NERC’s implementation of the Reliability Assurance Initiative (“RAI”) into the CMEP. Following the completion of the RAI at the end of 2014, NERC refers to the ongoing program as the “risk-based CMEP.”

The NERC Board of Trustees (“Board”) approved the proposed revisions to the Rules of Procedure on February 11, 2016. NERC also submitted the proposed revisions to the Rules of Procedure to FERC and the other Applicable Governmental Authorities in Canada.

II. PROPOSED REVISIONS

A. November 4 Order

As stated above, in the November 4 Order, FERC directed NERC to revise the applicable Rules of Procedure to reflect certain components of the risk-based CMEP. To begin with, FERC directed NERC to modify the Rules of Procedure to codify the Regional Entity self-log review period of three months with the possibility of adjustment to six months proposed by NERC in a previous filing.⁵ FERC noted that “[w]ithout such codification in the Rules of Procedure, the self-logging review period for Regional Entities could be subject to change without notice to, or approval from, the Commission.”⁶

Second, FERC identified that NERC neither proposed revisions to the Rules of Procedure data retention requirements for the ERO Enterprise to include data and other information related to self-logging, nor explained why self-logged items would not be subject to existing data retention provisions.⁷ FERC observed that “[t]he current language only covers data generated by other discovery methods including, among others, compliance audits, self-certifications, spot checks, compliance investigations, and self-reports.”⁸

Third, FERC noted that NERC did not propose Rules of Procedure revisions to reflect that “NERC currently provides Commission staff with a non-public preliminary notice of self-logged

⁵ November 4 Order at P 39.

⁶ *Id.*

⁷ *Id.* at P 40.

⁸ *Id.*

matters received by Regional Entities, similar to the preliminary notice provided to staff for other possible or alleged violations.”⁹

Finally, FERC found that the Rules of Procedure do not reflect FERC’s directive that NERC publicly post Compliance Exceptions.¹⁰

B. Proposed Revisions Development

After reviewing the proposed changes with the Regional Entities, NERC publicly posted the Rules of Procedure revisions on November 30, 2015, for a 45-day comment period ending on January 14, 2016. NERC notified various stakeholder groups of the 45-day comment period through a November 30, 2015, email announcement. NERC received several sets of comments. The commenters’ primary concerns related to the public posting of Compliance Exceptions addressed in Section 401.11. The commenters raised the potential issue that the draft language could be read to permit the release of certain confidential information. Under the Rules of Procedure, confidential information is protected by Section 1500; however, to alleviate any such concerns, NERC included additional language in the proposed revisions to Section 401.11 that makes any information release explicitly subject to Section 1500. All of the comments received are available on the NERC website at <http://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx> (under Proposed Revisions to NERC Rules of Procedure – Section 400 and Appendix 4C – November 30, 2015, Posting).

NERC posted a further revised draft of the Rules of Procedure changes incorporating comments received and accompanying materials on the NERC website on January 26, 2016, at least 15 days prior to consideration of these revisions by the Board, as contemplated in NERC’s process for proposed revisions to the Rules of Procedure. That posting included a document

⁹ *Id.* at P 41.

¹⁰ *Id.*

indicating how each comment received was considered.¹¹ On February 11, 2016, the Board approved the Rules of Procedure revisions.

III. PROPOSED REVISIONS SUMMARY

NERC proposes to revise Rules of Procedure Section 401 and Appendix 4C (CMEP) Sections 3.5A, 5.1, and 9.2. Each of these revisions is addressed below.

A. Section 401: Scope of the NERC CMEP

FERC has directed that NERC publicly post Compliance Exceptions in a previous order.¹² Although NERC has complied with this directive, NERC has not revised Rules of Procedure Section 401.11, which addresses public posting, to acknowledge this practice. To accomplish this, NERC proposes to insert in Section 401.11:

As required by an Applicable Governmental Authority, NERC will also post information concerning noncompliance disposed of as Compliance Exceptions, subject to Section 1500 of these Rules of Procedure.

B. Appendix 4C Section 3.5A: Self-Logging

The November 4 Order instructed NERC to include the Regional Entity's self-logging review period in the Rules of Procedure as described in NERC's November 3, 2014, filing. To comply with this directive, NERC proposes to modify Appendix 4C, Section 3.5A as follows:

The Compliance Enforcement Authority will ~~periodically~~ review the logs at least every three (3) months, with the possibility of extending the review period to six (6) months, and will make...

¹¹ See http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Attachment_3_ROP_Revisions_Jan2016.pdf.

¹² *N. Am. Elec. Reliability Corp., Order on Elec. Reliability Org. Reliability Assurance Initiative and Requiring Compliance Filing*, 150 FERC ¶ 61,108 at P 36 (2015).

C. Appendix 4C Section 5.1: Notice of Possible Violation

The November 4 Order directed NERC to acknowledge that NERC currently provides FERC staff with a non-public, preliminary notice of self-logged matters received by Regional Entities. In response, NERC proposes to revise Section 5.1 to reflect this practice as follows:

Upon issuing a Notice of Possible Violation or receiving information on a Compliance Exception (whether resulting from Self-Logging or not), the Compliance Enforcement Authority reports...” and “...and submits a Notice of Possible Violation, or information on a Compliance Exception (whether resulting from Self-Logging or not), on a confidential basis, to FERC...

D. Appendix 4C Section 9.2: Retention Requirements

Finally, FERC identified that NERC’s data retention requirements for the ERO Enterprise do not include data and information related to self-logging. To explicitly include this data, NERC submits changes to Section 9.2 as follows:

The Compliance Enforcement Authority records management policy will require that information and data gathered or received pursuant to ~~Compliance Program~~ CMEP activities, including but not limited to, Self-Logging, Compliance Audits...

Respectfully Submitted,

/s/ Teresina Stasko

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ATTACHMENTS 1 – 2

(Available on the NERC Website at

**[http://www.nerc.com/FilingsOrders/ca/Canadian%20Filings%20and%20Orders%20DL/Attach_NERC_CM
EP_ROP_March2016.pdf](http://www.nerc.com/FilingsOrders/ca/Canadian%20Filings%20and%20Orders%20DL/Attach_NERC_CM
EP_ROP_March2016.pdf)**)