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April 10, 2010

**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. RR10-1-000  
Compliance Filing of the North American Electric Reliability Corporation  
in Response to January 21, 2010 Commission Order Concerning Appendix 4D  
to the NERC Rules of Procedure**

Dear Ms. Bose:

The North American Electric Reliability Corporation (“NERC”) hereby submits this “Compliance Filing of the North American Electric Reliability Corporation in Response to January 21, 2010 Commission Order Concerning Appendix 4D to the NERC Rules of Procedure – 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 and 2, all of which are contained in a single pdf file. The Table of Contents to the narrative text list the two Attachments.

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

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**UNITED STATES OF AMERICA**  
**Before the**  
**FEDERAL ENERGY REGULATORY COMMISSION**

**NORTH AMERICAN ELECTRIC** )  
**RELIABILITY CORPORATION** )      **Docket No. RR10-1-000**

**COMPLIANCE FILING OF THE**  
**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**  
**IN RESPONSE TO JANUARY 21, 2010 COMMISSION ORDER**  
**CONCERNING APPENDIX 4D TO THE NERC RULES OF PROCEDURE –**  
**“PROCEDURE FOR REQUESTING AND RECEIVING TECHNICAL**  
**FEASIBILITY EXCEPTIONS TO NERC CRITICAL INFRASTRUCTURE**  
**PROTECTION STANDARDS”**

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April 21, 2010

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### **ATTACHMENTS:**

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

**Attachment 2:** Revised Appendix 4D to the NERC Rules of Procedure, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards” – Redlined version

## **I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) submits this filing in compliance with the Commission’s directives in its Order issued January 21, 2010 in this docket.<sup>1</sup> In the January 21 Order, the Commission approved proposed new Section 412 of the NERC Rules of Procedure (“ROP”) and proposed new Appendix 4D to the ROP, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards” (“TFE Procedure”). However, the January 21 Order also directed NERC to make a number of revisions to the TFE Procedure and to submit those revisions in a compliance filing due within 90 days.

**Attachment 1** to this filing is the proposed revised TFE Procedure, incorporating revisions in response to the directives in the January 21 Order. **Attachment 2** is the proposed revised TFE Procedure redlined to show the revisions from the TFE Procedure originally filed with the Commission on October 29, 2009,<sup>2</sup> and approved in the January 21 Order.

Prior to submitting this compliance filing, NERC posted a proposed revised TFE Procedure on its website for stakeholder comment for (as approved by the NERC Board of Trustees) a thirty-day comment period. A number of comments were received during the posting period, and several of the comments prompted further revisions to the TFE Procedure, prior to submission to the NERC Board of Trustees for approval. The revised TFE Procedure was approved by the NERC Board on April 16, 2010.

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<sup>1</sup> *Order Approving Technical Feasibility Exception Procedures and Ordering Compliance Filing*, 130 FERC ¶ 61,050 (2010) (“January 21 Order”).

<sup>2</sup> *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*, filed October 29, 2009, Attachment 2.

## **II. NOTICES AND COMMUNICATIONS**

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

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## **III. RESPONSES TO DIRECTIVES IN JANUARY 21 ORDER**

### **January 21 Order, P 8 – footnote 18:**

Under the TFE procedures, a Responsible Entity will submit its TFE request to the applicable Regional Entity for adjudication. However, the Southwest Power Pool and the Electric Reliability Council of Texas (ERCOT) each is a Responsible Entity that currently has a division that is a Regional Entity (SPP Regional Entity and Texas Regional Entity, respectively). In addition, other Regional Entities (WECC and FRCC) themselves serve as Reliability Coordinators and, as such, are Responsible Entities. The Commission understands that each of these Responsible Entities would submit any TFE request to NERC.

### **NERC Response:**

Because submission of a TFE Request<sup>3</sup> to NERC (or another Compliance Enforcement Authority) by a Regional Entity or affiliate of a Regional Entity concerning an Applicable Requirement that the Regional Entity is subject to as a Responsible Entity was not expressly

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<sup>3</sup> Capitalized terms used in this filing and not otherwise defined herein are defined terms in the TFE Procedure.

provided for in the originally-submitted version of the TFE Procedure, the following footnote to the text of Section 3.3 has been included in the revised TFE Procedure:

Text of Section 3.3:

It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Appendix, to make all determinations as to whether a TFE Request has met the criteria for approval.<sup>3</sup>

Footnote 3:

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

NERC notes that there are presently pending before the Commission (i) a petition for the necessary approvals to establish Texas Reliability Entity, Inc., a corporation unaffiliated with ERCOT, as the Regional Entity for the ERCOT region, and to terminate the delegation agreement between NERC and Texas Regional Entity, a division of ERCOT;<sup>4</sup> and (ii) a petition for approval of agreements, and amendments to the relevant delegation agreements, that will result in SERC Reliability Corporation becoming the Compliance Enforcement Authority with respect to the registered entity functions performed by Florida Reliability Coordinating Council and Southwest Power Pool.<sup>5</sup>

**January 21 Order, P 20:**

The Commission reaffirms what it previously stated in Order No. 706 with respect to CIP-006-1 R1.1 and CIP-007-1 R3. With respect to CIP-006-1 R1.1, in Order No. 706 the Commission

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<sup>4</sup> Docket No. RR10-6-000.

<sup>5</sup> Docket No. RR10-7-000.

directed NERC to utilize the TFE procedures for any alternative measures sought for CIP-006-1 R1.1.<sup>31</sup> Accordingly, the Commission directs NERC to revise section 1.3 as necessary to designate CIP-006-1 R1.1 as an “Applicable Requirement” subject to the TFE procedure.

<sup>31</sup> Order No. 706 at P 559-60 (directing NERC “to treat any alternative measures for Requirement R1.1 of CIP-006-1 as a technical feasibility exception to Requirement R1.1, subject to the conditions on technical feasibility exceptions”).

**NERC Response:**

Section 1.3 of the TFE Procedure has been revised to include CIP-006-2 R1.1 in the list of Applicable Requirements. In adding CIP-006-2 R1.1 to the list, NERC has included the following reference: “including the Interpretation in Appendix 3.”<sup>6</sup> The Interpretation in Appendix 3 to CIP-006-2 specifies that alternative measures to a six-wall Physical Security Perimeter may be physical or logical, on the condition that they provide security equivalent or better to a six-wall border. This Interpretation also states:

Alternative physical control measures may include, but are not limited to, multiple physical access control layers within a non-public, controlled space. Alternative logical control measures may include, but are not limited to, data encryption and/or circuit monitoring to detect unauthorized access or physical tampering.

The reference to this Interpretation has been included in the list of Applicable Requirements to make it clear that the use of alternative measures, in accordance with the Interpretation, to comply with R1.1 requires a TFE.<sup>7</sup>

**January 21 Order, P 22:**

NERC was given the discretion to allow technical feasibility exceptions to CIP-007-1 R3. Having chosen to allow exceptions to CIP-007-1 R3 for technical infeasibility, however, such

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<sup>6</sup> Inclusion of this reference was prompted by a stakeholder comment on the posted version of the revised TFE Procedure.

<sup>7</sup> The Interpretation in Appendix 3 to CIP-006-2 was approved by the NERC Board on February 16, 2010, and was filed with the Commission for approval on April 20, 2010 (Docket No. RM06-22-000).

exceptions must be implemented using the TFE procedure. NERC was not given the discretion to apply different requirements or a different process to a CIP-007-1 R3 exception than the technical feasibility “criteria and conditions” (i.e., Appendix 4D) that NERC has developed in response to the Commission’s determination on technical feasibility in Order No. 706. Simply put, an exception to CIP-007-1 is still a technical feasibility exception. NERC cannot avoid this result by relying on the fact that CIP-007-1 R3 does not include the phrase “technical feasibility.” Accordingly, the Commission directs NERC to revise section 1.3 as necessary to designate CIP-007-1 R3 as an “Applicable Requirement” subject to the TFE procedure.

**NERC Response:**

Section 1.3 of the TFE Procedure has been revised to include CIP-007-2 R3.2 in the list of Applicable Requirements. Although P 22 of the January 21 Order directs NERC “to revise section 1.3 as necessary to designate CIP-007-1 R3 as an “Applicable Requirement” subject to the TFE procedure,” it is specifically R3.2 that could potentially require a TFE:

**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.

That is, R3.2 is the specific provision of CIP-007 R3 that allows for the possibility of not implementing the required security patches and instead implementing compensating measures to mitigate risk. NERC notes that in discussing the need for technical feasibility exceptions to requirements of CIP Standards in Order No. 706, the Commission referred specifically to R3.2 and its provision for adopting compensating measures to mitigate risk rather than implementing a patching program.<sup>8</sup>

The direction to include CIP-007 R3 in the list of Applicable Requirements necessitated other changes to the TFE Procedure. The other CIP standards previously listed in section 1.3 as Applicable Requirements all (as stated in the currently-effective version of the TFE Procedure)

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<sup>8</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040 (2008), at PP 586 and 587 (“Where a patch is not installed, the responsible entity must document compensating measure(s) applied to mitigate risk exposure . . . .”)



“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.” The currently-effective version of the TFE Procedure also states:

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. 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*.

However, CIP-007-2 R3 does not include any express “technically feasible” or “technical limitations” language. It was therefore necessary to revise the TFE Procedure to provide for Applicable Requirements that do not contain express “technically feasible” or “technical limitations” language. To that end, the following revisions have been made:

Section 1.1: The phrase “where the text of the requirement provides for deviation from Strict Compliance with its terms on such grounds” (referring to “technical feasibility” and “technical limitations”) has been deleted.

Section 1.3: The following revisions have been made:

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

[list of Applicable Requirements omitted]

Subsequent versions of these requirements will also be eligible for TFEs if (i) they continue to expressly provide either (~~iA~~) that compliance with their terms is required where or as technically feasible or (~~iiB~~) that technical limitations may preclude compliance with the terms of the requirement [footnote omitted], or (ii) so long as FERC does not direct that they be removed from the list of Applicable Requirements. Other requirements of CIP Standards may become Applicable

Requirements as the result of revisions to the CIP Standards in accordance with the NERC *Bylaws* and *Rules of Procedure* including Appendix 3A, *Reliability Standards Development Procedure*, or as a result of FERC directive. NERC shall maintain a current list of Applicable Requirements on its website.<sup>[9]</sup>

Section 2.2: The definition of “Applicable Requirement” has been modified as follows:

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

**January 21 Order, PP 26-29:**

26. The Commission questions the utility of developing “Class Types” for the TFE process. If the purpose behind such provision is to expedite the TFE review process, then NERC must clearly define its procedure, including stating its criteria for identifying equipment as a Class-Type TFE. While NERC provides general examples of equipment and devices that would qualify as Class-Type TFEs, any listed Class-Type TFE must be explicitly identified, including as much detail as possible, such as manufacturer, make, and model number.

27. However, if the Class-Type TFE list will not be used to expedite the TFE review process, the Commission questions what purpose such a list serves. That is, it is unclear what would justify a Class-Type TFE list if such list will not be used to expedite the TFE review process. The Commission is concerned that the formulation of Class-Type TFE categories could undermine the Commission’s determination that TFEs should be reviewed on a case-by-case basis.<sup>40</sup> The Class-Type TFE mechanism proposed by NERC is not sufficiently specified to relieve the Commission’s concerns. We therefore direct the ERO to submit a compliance filing, within 90 days of the date of this order, identifying the purpose of a Class-Type TFE list and defining the process for identifying Class-Type TFEs and the procedure for publishing and maintaining the Class-Type TFE list. Further Commission action may be necessary depending on the content of this compliance filing.

<sup>40</sup> See Order No. 706 at P 179.

28. NERC states the Class-Type TFE list will be provided on the NERC website. However, in light of security concerns, any Class-Type TFE list should only be available to Responsible Entities and Regional Entities in a non-public forum. Furthermore, the Commission directs NERC to provide a semi-annual, non-public report to the Commission tracking additions,

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<sup>9</sup> The statement that “NERC shall maintain a current list of Applicable Requirements on its website” has been added because it may no longer be possible for Responsible Entities to identify Applicable Requirements solely by whether they include “technically feasible” or “technical limitations” language in their text.

modifications, and deletions to the Class-Type TFE list and describing the reasons behind the changes.

29. NERC should consider the far reaching effects that Class-Type TFEs may have on the security of the Bulk-Power System, and so should take an active role in the ongoing development of mitigation strategies to ensure the consistency of such strategies, where appropriate, across the Regions. To provide such consistency, NERC may need to provide guidance on what may be acceptable mitigation strategies for particular, individual Class-Type TFEs.<sup>41</sup>

<sup>41</sup> To protect the security of the Bulk-Power System, the Commission expects that NERC and the Regional Entities will take steps to ensure that any guidance regarding potential mitigation strategies will be provided to Responsible Entities in a secured manner and that NERC, the Regional Entities, and the Responsible Entities will take appropriate steps to prevent inappropriate disclosure to individuals who do not need access to the guidance.

**NERC Response:**

In light of the concerns expressed by the Commission over the utility and application of Class-Type TFEs, and the additional requirements and limitations the Commission directed be imposed on the use of Class-Type TFEs, NERC has concluded that the use of and references to Class-Type TFEs should be deleted from the TFE Procedure. In considering how to respond to the Commission's concerns and directives, NERC concluded that the expenditure of resources that would be required to implement the Class-Type TFE concept would not be justified by the benefits of establishing, and providing for use of, a list of Class-Type TFEs. This judgment was informed, in part, by input from stakeholders that, while having a list of Class-Type TFEs available would have been useful for the initial submittals of TFE Requests (which are already underway), the Class-Type TFE concept would be of diminishing usefulness going forward.

Accordingly, all references to "Class-Type TFE" have been eliminated from the revised TFE Procedure. This affects former Section 2.6 (deleted the definition of this term), Section 3.1(vi), and Section 4.3.2 (former item 4 – deleted; and former item 5/current item 3).

### **January 21 Order, P 32:**

The Commission is nevertheless concerned that the proposed phrasing of sections 3.1(iv) and (vi), respectively, fails to specify (1) what entity will be responsible for determining whether a safety risk or issue outweighs the reliability benefits of Strict Compliance with the Applicable Requirements, (2) what entity will be responsible for determining whether costs “far exceed the benefits” to reliability of the Bulk Electric System, and (3) the manner in which reliability benefits are intended to be quantified as to make this determination. It also appears that section 3.1 of the TFE Procedure will require NERC or the Regional Entities to verify that the threshold requirements set forth in section 3.1 have been met for each TFE request. However, given our preference for consistency in granting exceptions, we believe a uniform framework for establishing TFEs under the criteria in Section 3.1 is necessary and appropriate to ensure the effective administration of the TFE process. We therefore direct NERC: (1) to designate which entity or entities will determine under section 3.1(iv) what safety risks or issues outweigh the benefits of Strict Compliance with the Applicable Requirement, (2) to designate the entity or entities responsible for determining under section 3.1(vi) what costs “far exceed the benefits” to the reliability of the Bulk Electric System, and (3) to specify the manner in which reliability benefits are intended to be quantified to make this determination. The modifications set forth above should be made in a compliance filing within ninety days of the date of this order. In the event that multiple entities, such as the various Regional Entities, will be responsible for making the determinations under sections 3.1(iv) and (vi), NERC must include the steps that it will take to ensure consistency and security in administering the TFE process.<sup>44</sup>

<sup>44</sup> As the Commission stated in Order No. 706, it is critical that the ERO, Regional Entities, and the Commission understand the circumstances and manner in which responsible entities invoke a TFE. *See* Order No. 706 at P 220. As discussed in more detail below, NERC’s annual report to the Commission should address circumstances and justifications for TFEs and the mitigation measures used to address vulnerabilities. The Commission seeks this information to ensure consistency among the Regional Entities in both the basis for granting TFEs and the accepted mitigation measures among similar approved TFEs.

### **NERC Response:**

Sections 3.1(iv) and 3.1(vi) have been revised to state expressly that the Regional Entity will be responsible for determining what safety risks outweigh the benefits of Strict Compliance and what costs “far exceed the benefits to reliability of the Bulk Electric System of Strict Compliance.” The following revisions have been made:

- 3(iv): would pose safety risks or issues, that, in the determination of the Regional Entity, outweigh the reliability benefits of Strict Compliance with the Applicable Requirement;

3(vi): would require the incurrence of costs that, in the determination of the Regional Entity, far exceed the benefits to the reliability of the Bulk Electric System of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset, the related Facility and the Bulk Electric System of continuing to operate with the existing equipment ~~can be shown to be~~ is minimal in the determination of the Regional Entity.

Designation of the Regional Entities as having these responsibilities is consistent with the overall approach of the TFE Procedure that the Regional Entities will be responsible for the substantive review, and the approval or disapproval, of TFE Requests through the compliance audit process or other compliance monitoring processes. Consistent with this overall approach, the following sentence is included in new Section 3.3:

It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Appendix, to make all determinations as to whether a TFE Request has met the criteria for approval.

With respect to the third item in P 32, “to specify the manner in which reliability benefits are intended to be quantified to make this determination,” at this early stage of the submission and review of TFE Requests, NERC has not been able to develop a straightforward, formulaic approach to this quantification that would be appropriate for the wide range of Covered Assets for which TFE Requests are being and will be submitted. Therefore, NERC’s approach to this issue, at this relatively early stage of the TFE Request submission and review process, is to provide for additional activities by NERC and the Regional Entities, on an ongoing basis, to ensure consistency among the Regions in making these determinations. To that end, several provisions have been added to the TFE Procedure: First, the following sentence has been added in new Section 3.3:

NERC and the Regional Entities shall carry out the activities described in Section 11.0 of this Appendix to provide consistency in the review and approval or disapproval of TFE Requests across Regional Entities and across TFE Requests.

Second, a new Section 11.0, Consistency in Approval and Disapproval of TFE Requests, has been added to the TFE Procedure:

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

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

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

approval and disapproval of TFE Requests in the respects listed in Section 11.1.

New Section 11.2(1) will provide for ongoing and prompt review by NERC of Regional Entity determinations on TFE Requests. Through this ongoing review process, NERC expects to be able to spot inconsistencies in the application of the Section 3.1 criteria (i) among the Regional Entities, (ii) among the different Applicable Requirements for which TFEs are requested, and (iii) among the different types of Covered Assets for which TFEs are requested. NERC will then be able to give prompt guidance to the Regional Entities to promote greater consistency in their application of the Section 3.1 criteria. The formation and activities of the NERC-Regional Entity committee provided for in Section 11.2(3) will also contribute to consistency. Finally, the catalogue to be established pursuant to Section 11.2(2) will provide a resource for the Regional Entities to access to ensure consistency in their review and approval or disapproval of new TFE Requests – a Regional Entity will be able to access the catalogue to see if a similar TFE Request (for the same or a similar type of Covered Asset) has been previously submitted and approved or disapproved.<sup>10</sup>

The new provisions in Sections 3.3 and 11.0 also address the overall directive at the end of P 32 that “[i]n the event that multiple entities, such as the various Regional Entities, will be responsible for making the determinations under sections 3.1(iv) and (vi), NERC must include the steps that it will take to ensure consistency and security in administering the TFE process.”

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<sup>10</sup> NERC received stakeholder comments on the posted revised TFE Procedure that Responsible Entities should have access to the catalogue as well. At present, NERC does not have a secure infrastructure and protocol in place that would allow for electronic access to the catalogue only by authorized personnel of Responsible Entities with appropriate security clearances. In the future, NERC may be able to develop and implement means to allow for such secure access.

In light of the addition of new Section 11.2, the following provision has been added to Section 12.0 (formerly Section 11.0), Confidentiality of TFE Requests and Related Information, which lists documents in the TFE process that will be treated as Confidential Information:

- (vii) All guidance issued to Regional Entities pursuant to Section 11.2 by NERC or by the committee described in Section 11.2(3), and all minutes of meetings of the committee and discussions between or among its members.

Additionally, NERC believes consistency in determinations will be enhanced by the provision that has been added to Section 3.2 to make it clear that the compensating measures and/or mitigating measures in a TFE Request must “achieve at least a comparable level of security for the Bulk Electric System as would Strict Compliance with the Applicable Requirement;” and by the provision in new Section 3.3 that “[t]he burden to justify approval of a TFE Request in accordance with the provisions of this Appendix is on the Responsible Entity.” In light of these provisions, a TFE Request that does not make a clear showing that it meets one or more of the Section 3.1 criteria will be disapproved by the Regional Entity.

Finally, in response to the directive in footnote 44 to P 32 that “NERC’s annual report to the Commission should address circumstances and justifications for TFEs and the mitigation measures used to address vulnerabilities,” Section 13.1 (formerly Section 12.1), “Contents of Annual Report,” has been revised to specify additional reporting items. *See* the discussion in the response to P 57 of the January 21 Order, below.

**January 21 Order, PP 33-35:**

33. Section 3.2 of Appendix 4D states:

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.<sup>45</sup>



The Commission is concerned that the phrasing of this section fails to convey that alternative methods of compliance must provide a comparable level of security as Strict Compliance with the CIP requirement.

<sup>45</sup> See NERC Petition at Appendix 4D, § 3.2.

34. In Order No. 706, the Commission states that an integral issue in determining the adequacy of mitigation steps taken 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 Strict Compliance would.<sup>46</sup> The Commission specifically directed the ERO to develop a requirement ensuring that the Responsible Entity develops, documents, and implements a mitigation plan that achieves a comparable level of security to the requirement.<sup>47</sup>

<sup>46</sup> Order No. 706 at P 183.

<sup>47</sup> *Id.* P 192.

35. The Commission is concerned that a failure to specify a “comparable level of security” in the TFE procedures may result in the approval of mitigation plans which do not provide at least the level of protection the CIP Reliability Standard is intended to achieve. The Commission believes that the widespread use of a TFE process that does not explicitly require a comparable level of security in the entities’ mitigation plans may degrade the overall cyber security of the Bulk-Power System. We therefore reiterate that regardless of the reason that a TFE is being employed, NERC is responsible for ensuring that the Responsible Entities protect assets that are critical to the reliable operation of the Bulk-Power System by addressing the vulnerabilities associated with each exception, utilizing measures that establish a comparable level of security as Strict Compliance. This alternative obligation continues until Strict Compliance is attained by the Responsible Entity requesting a TFE.<sup>48</sup> NERC is hereby directed to modify section 3.2 of Appendix 4D to require any alternative means of compliance to achieve a comparable level of security as Strict Compliance with the requirement. NERC must submit a revised section 3.2 of Appendix 4D in a compliance filing within ninety days of the date of this order.

<sup>48</sup> *Id.* P 184.

**NERC Response:**

Section 3.2 has been revised as follows:

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

Additionally, as noted above, a sentence is included in new Section 3.3 stating that “The burden to justify approval of a TFE Request in accordance with the provisions of this Appendix is on the Responsible Entity.” Further, for clarity, the lead-in sentence in Section 3.1 has been revised to state that “A Responsible Entity may request and obtain approval for a TFE on the grounds that ~~when~~ Strict Compliance with an Applicable Requirement, considered in the context or environment of the Responsible Entity’s Covered Asset that is the subject of the TFE Request [meets one or more of the listed criteria].”

**January 21 Order, P 38:**

The Commission is concerned that NERC’s proposal does not require consistency among the regions with respect to the data required for the initial review process in Part A. In section 4.3.1 of Appendix 4D, NERC states “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.” However, section 4.2 does not contain a list of the required information. We understand that NERC submitted an illustrative Part A template rather than a required form to provide regional flexibility and to allow Regional Entities to modify the template for use on their respective portals. However, the need for regional differences appears to be a formatting issue. We believe that the scope of the information required in Part A can and should be uniform among the Regional Entities regardless of the template layout. Therefore, the Commission directs NERC to establish a uniform set of required information for the Part A submission and incorporate it in into its Rules of Procedure. Creating a uniform set of required information will ensure consistency among the regions and will ensure that NERC is receiving all of the information necessary to prepare its required reports. NERC should submit the above described revisions in its compliance filing within ninety days of the date of this order.

**NERC Response:**

In Section 4.3, Required Information to be Included in the TFE Request, Section 4.3.1 has been revised to state that Part A of a TFE Request shall contain the Part A Required Information specified “in this Section 4.3.1” and that the Part A Required Information shall be submitted to the Regional Entity “using its template.” A sentence has also been added stating that “Consistent with the summary nature of the Part A Required Information, the Regional Entity’s template may provide lists of responses to be selected by the Responsible Entity and/or

limited space for narrative descriptions, for the Part A Required Information listed below.” Section 4.3.1 then sets forth a list of the nineteen items of Part A Required Information. This uniform set of Part A Required Information must be included in all Part A submissions.<sup>11</sup>

In addition, with the list of Part A Required Information now provided in Section 4.3.1, “The Applicable Requirement that is the subject of the TFE Request” has been deleted from the list of Part B Required Information in Section 4.3.2. One of the items of the Part B Required Information is “[a] copy of Part A of the TFE Request,” which will include identification of the Applicable Requirement.

**January 21 Order, PP 41-42:**

41. The Commission is concerned that some of the provisions in section 5.2.5 may place too heavy a burden on the Regional Entities that will be responsible for processing a potentially large number of complex TFE requests. In particular, those provisions could be read to place the burden on the Regional Entities to identify approvable compensating and/or mitigating measures if the Responsible Entity’s original TFE is disapproved.

42. The Commission believes that this type of burden shifting in the context of cyber security is inappropriate. While we agree with the general notion that Regional Entities should be required to identify reasons for rejection and may recommend mitigation strategies, Regional Entities should not bear the burden of identifying a comprehensive list of revisions, which, if made, would definitionally result in the Responsible Entity receiving a TFE. A Regional Entity may not have sufficient information on the details of a Responsible Entity’s cyber architecture to determine the most effective compensating and/or mitigating measures. Placing the burden on the Regional Entity to identify those measures could potentially delay timely determinations as a Regional Entity struggles with what particular strategies to identify. More importantly, given time and resource limitations, this requirement could result in inadequate compensating or mitigating strategies. In this regard, the Commission notes that a Regional Entity is supposed to complete its substantive review and issue a notice of approval or rejection within one year after the TFE is received, and that Regional Entities do not have unlimited resources.<sup>57</sup> Due to concerns over the frequency and complexity of TFE use as well as concerns over both time and the adequacy of Regional Entity resources, the Commission believes that the burden of

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<sup>11</sup> Of course, for one or more items of Part A Required Information, the entry may be “No” or “None”, e.g., item 17, “Whether the TFE Request is supported, in whole or in part, by any of the following: Classified National Security Information; NRC Safeguards Information; or Protected FOIA Information.”

establishing a valid TFE should remain squarely with the Responsible Entity requesting it.<sup>58</sup> Accordingly, we direct NERC to change section 5.2.5 of Appendix 4D to address this concern.

<sup>57</sup> As the Commission indicated in its order conditionally accepting NERC's 2010 Business Plan and Budget, it continues to have concerns about the adequacy of the Regional Entities' resources budgeted for the TFEs because resource constraints may affect the length of the TFE approval periods as well as the quality of TFE review. *See North American Electric Reliability Corp.*, 129 FERC ¶ 61,040, at P 35 (2009).

<sup>58</sup> The Commission, the ERO, and a Regional Entity are not precluded from exercising their respective authority to review a claimed exception, whether resulting from an incident, a complaint, on its own initiative, or otherwise.

### **NERC Response:**

Section 5.2.5 has been revised as follows:

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

In addition, as noted earlier, new Section 3.3 includes the provision that “[t]he burden to justify approval of a TFE Request in accordance with the provisions of this Appendix is on the Responsible Entity.”

### **January 21 Order, PP 45-47:**

45. . . . As proposed, section 5.3 establishes a period during which a Responsible Entity will not be subject to enforcement action after a Regional Entity takes adverse action on a TFE Request. In particular, section 5.3 grants a Regional Entity broad discretion in determining the maximum period of time during which the Responsible Entity would not be in violation of an Applicable Requirement for which the Regional Entity has rejected or disapproved a TFE Request. As drafted, section 5 permits the Regional Entity to set an Effective Date<sup>59</sup> far in the future, thus

maximizing the period for which violations could not be found and penalties could not be ordered. While some discretion is useful to allow the Regional Entity to tailor each case to its unique circumstances, section 5 is entirely open-ended, setting no maximum time period for the Effective Date. A Regional Entity may, by choosing a date far into the future, effectively grant amnesty to a Responsible Entity for an unspecified and indefinite period of time after rejection or disapproval of a TFE request. The Commission believes that stricter limits and guidelines regarding the Effective Date will curb the potential for abuse and likely improve the quality of TFE requests. Accordingly, the Commission requires NERC to adopt in the TFE procedures the following revisions.

<sup>59</sup> As set forth in section 5.2.6 of the TFE procedure, the “Effective Date” is the date by which the Responsible Entity is subject to a notice of Alleged Violation with respect to the Requirement that was the subject of the disapproved TFE Request, unless the Responsible Entity: “(i) has submitted an amended TFE Request . . . or (ii) has achieved Strict Compliance with the Applicable Requirement.”

46. First, there must be an outer limit to the Regional Entity’s determination of an Effective Date. Under NERC’s proposal, the Regional Entity has the discretion to set the Effective Date so as to allow indefinite protection against a finding of a violation or imposition of a penalty.<sup>60</sup> The Commission is concerned that, without an outer limit specification for the Effective Date, Responsible Entities may have an incentive to submit inadequate TFE requests for the sole purpose of delaying a finding of violations and penalties. To address these concerns, the Commission directs NERC to revise sections 5.1.5 and 5.2.6 to set an outer limit for the Effective Date that the Regional Entity must observe absent exceptional circumstances.<sup>61</sup> Although NERC should propose in its compliance filing an appropriate outer limit, the Commission notes that an outer limit of no longer than 60 days after the Regional Entity’s issuance of a notice of rejection and no longer than 90 days after the Regional Entity’s issuance of a notice of disapproval should be sufficient in most cases for a Responsible Entity to submit and obtain approval from the Regional Entity of a mitigation plan or to bring itself into Strict Compliance with particular Applicable Requirements of the CIP Standards. Because there are a number of pending TFE requests, the Commission directs NERC to use, on an interim basis until NERC files and the Commission approves the compliance filing addressing this issue, an outer limit on Effective Dates of no longer than 60 days after issuance of a notice of rejection and no longer than 90 days after the issuance of a notice of disapproval.

<sup>60</sup> In Order No. 706, the Commission stated that it does not believe that blanket waivers from an enforcement action are appropriate in this context and noted that it has previously denied requests for what are essentially “safe harbors” from enforcement. *See* Order No. 706 at P 320.

<sup>61</sup> Including the qualifier absent “exceptional circumstances” in the provision establishing an outer limit for an Effective Date provides flexibility to accommodate situations where an Effective Date set at the outer limit would not be sufficient for a Responsible Entity to achieve Strict Compliance with the CIP Reliability Standard at issue. This exception should be used to accommodate circumstances such as instances where equipment needs to be replaced and there is an unavoidable delay due to the manufacturer’s required lead time to produce specialized equipment.

47. Second, the above-described outer limit should include a qualifier that would permit, where “exceptional circumstances” warrant, the Regional Entity to set an Effective Date that accommodates situations where the applicable outer limit is not sufficient for a Responsible Entity to achieve Strict Compliance with the Reliability Standard at issue. If the Regional Entity determines that exceptional circumstances warrant an Effective Date that is after the proscribed outer limit, we direct the Regional Entity to provide a detailed explanation of such determination in the notice of rejection/disapproval to the Responsible Entity and to provide a copy of such notice to NERC. This requirement, to be added in the compliance filing, would continue to afford the Regional Entity discretion in tailoring each case to its unique circumstances but would also ensure that any extended period be supported by a clear rationale and awarded only to legitimate TFE requests subject to NERC’s oversight to, among other things, ensure correct and consistent application.

**NERC Response:**

The directives and concerns in PP 45-47 have been addressed by the following revisions to Sections 5.1.5 and 5.2.6 and by adding the sentence shown below in Section 5.2.7. In addition, consistent with the directives and concerns in PP 45-47, Section 9.3, concerning termination of an approved TFE, has been revised as shown below.

Section 5.1.5:

. . . The notice shall state an Effective Date which shall be no less than thirty-one (31) calendar days and no more than sixty-one (61) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than sixty-one (61) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice.

Section 5.2.6:

A notice disapproving a TFE Request shall state an Effective Date, which shall be no ~~earlier~~ less than ~~the sixty-first~~ one (61<sup>st</sup>) ~~calendar day following the date of~~ calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice. [Remainder of section unchanged.]

Section 5.2.7:

. . . If the Regional Entity has disapproved the TFE Request and determined there were exceptional circumstances justifying an Effective Date more than ninety-one (91) days after the date of issuance of the notice, the Regional Entity's report to NERC shall include a description of such exceptional circumstances.

Section 9.3:

. . . The Effective Date shall be no earlier than the less than sixty-firstone (61<sup>st</sup>) calendar day days and no more than ninety-one (91) calendar days after the date of issuance of the notice of termination, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the issuance of the notice of termination due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice of termination.

**January 21 Order P 48:**

48. We also find that if a TFE Request was not made in good faith or was fraudulent, the Responsible Entity should be subject to an enforcement action where the provisions and protections of section 5.3 are not applicable. The Commission will not tolerate TFE Requests that were not made in good faith or that were fraudulent and we fully expect NERC and Regional Entity staff to monitor TFE requests to detect the misuse of the exceptions procedure. Accordingly, the Commission directs NERC to add a provision to this effect in its 90-day compliance filing.

**NERC Response:**

The following new provision has been added to Section 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:

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

**January 21 Order, P 57:**

57. The Commission is concerned that simply reporting the total number of requested and outstanding TFEs could distort the Commission's analysis of the pervasiveness of TFE use throughout the Bulk-Power System due to the fact that there may be multiple TFEs requests for a single asset; i.e., an individual piece of equipment. To provide the Commission with a more accurate picture of the frequency of TFE use, NERC's report must also distinguish the number of TFEs approved from the number of assets with approved TFEs. In addition, in NERC's annual report the information required by section 12.1(iii) and (iv) must be detailed enough to allow the Commission to evaluate the level of consistency among the Regional Entities in both the justification for granting TFEs and the accepted mitigation measures among similar approved TFEs. This information should be provided to the Commission in such a way as to avoid security concerns accompanying individual asset identification. Further, NERC's annual report also should include for each TFE request that was granted an Effective Date beyond the outer limits to be set forth in sections 5.1.5 and 5.2.6, due to exceptional circumstances, the number of days the request was not subject to imposition of any findings of violations or imposition of penalties or sanctions under section 5.3. The Commission directs NERC to submit a compliance filing within 90 days of the date of this order modifying section 12 of Appendix 4D to track this information for and report it in the annual report, broken down by Regional Entity. In addition, NERC should consider any other additional information that may help further refine and analyze the use of TFEs and their impact on the reliability of the Bulk-Power System.

**NERC Response:**

The following items have been added to Section 13.1 (formerly Section 12.1), Contents of Annual Report:

- In item (i), "the numbers of unique Covered Assets for which TFEs have been approved."
- In item (ii), "the types of Covered Assets that are the subject of submitted and approved TFE Requests."
- A new item (v), as follows:

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

Several related changes have also been made to Sections 12.0 and 13.0 (formerly Sections 11.0 and 12.0, respectively). First, with the expanded and more detailed content of the



Annual Report, it may be necessary to include Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in the Annual Report. Accordingly, former Section 11.2, which provided that the Annual Report should be prepared in such a way that it can be filed with Applicable Governmental Authorities on a public basis, has been deleted. Section 13.4 (formerly Section 12.3) has been re-captioned to refer to a “Confidential Appendix,” and has been revised as shown below:

It is the intent of this Appendix that 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. However, if NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an Annual Report in order to satisfy the information requirements specified in this Procedure or required by FERC or other Applicable Governmental Authorities, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the Annual Report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance with their procedures for receiving confidential, proprietary and other protected information.<sup>[12]</sup>

Second, a new Section 13.2 has been added to provide for submission of certain information in quarterly reports by the Regional Entities to NERC. Receipt of this information on a quarterly basis (rather than only once per year) will facilitate NERC’s timely preparation of the Annual Report:

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<sup>12</sup> The provision for advance notification to a Responsible Entity that its identified protected information would be included in a confidential appendix to the Annual Report was prompted by a stakeholder comment on the posted revised version of the TFE Procedure.

In order to facilitate timely preparation of the Annual Report, each Regional Entity shall submit to NERC, within thirty (30) calendar days following the end of each calendar quarter, a report listing (i) the types of Covered Assets with respect to which TFE Requests were approved during such quarter, and (ii) final totals for the quarter of TFE Requests accepted and rejected and TFE Requests approved and disapproved. The reports submitted by the Regional Entities to NERC shall be Confidential Information.

Third, the following sentence has been deleted from Section 4.2(i): “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.” There is no need to “single out” the Part A Required Information as an information source in this regard. NERC expects to rely primarily on the notices and reports it receives from the Regional Entities of accepted/rejected and approved/disapproved TFE Requests (Sections 5.1.4, 5.1.5, 5.2.4, 5.2.5), the quarterly reports it will receive from the Regional Entities pursuant to new Section 13.2, and the activities in new Section 11.0, to prepare the Annual Report and as the bases for monitoring the Regional Entities’ determinations for consistency.

#### **IV. OTHER PROPOSED REVISIONS**

The following additional revisions have also been made to the TFE Procedure, not in response to specific directives, but rather due to the progress of events or to correct errors or omissions that were not previously identified.<sup>13</sup>

1. In Section 1.3, the list of Applicable Requirements has been revised to refer to the “Version 2” Critical Infrastructure Protection (“CIP”) Standards, which became effective on

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<sup>13</sup> In response to the posting of the proposed revised TFE Procedure for public comment, NERC received a number of comments from stakeholders proposing changes to the TFE Procedure that would not be in response to the directives in the January 21 Order. As this is a compliance filing, consideration of significant substantive revisions to the TFE Procedure other than in response to the directives in the January 21 Order is not appropriate. NERC will evaluate these other comments as a basis for possible amendments through a separate process.

April 1, 2010 (*i.e.*, CIP-005-2, CIP-006-2 and CIP-007-2). While NERC acknowledges this is not a “compliance” revision, NERC believes that since a revised TFE Procedure is being submitted, it is appropriate for the revised TFE Procedure to refer to the currently-effective versions of the Applicable Requirements.

2. In footnote 4 (formerly footnote 3), the description of the acronym for “TRE” to be used in TFE identifiers has been changed to “Texas Regional Entity/Texas Reliability Entity,” in light of the proposal now pending before the Commission for approval of designation of the new Texas Reliability Entity, Inc. as the Regional Entity for the ERCOT region.

3. Also in footnote 4 (formerly footnote 3), the provision for a “NERC” identifier, to be “applicable where NERC, rather than a Regional Entity, is the Compliance Enforcement Authority for the Responsible Entity,” has been deleted. Per Section 5.1.2, the identifier is to use “the Regional Entity within whose geographic boundaries the Covered Asset is located;” therefore, it is irrelevant to the establishment of the identifier that the Compliance Enforcement Authority for the Responsible Entity is NERC (or, for that matter, a Regional Entity other than the Regional Entity within which the Responsible Entity’s Covered Asset is located).

4. In Section 4.5, Submission of TFE Request in Advance of Compliant Date, the following revision has been made to the second sentence:

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.

As Appendix 4D became effective on January 21, 2010, pursuant to the January 21 Order, the reference “if it is effective by January 31, 2010” is no longer needed.

5. Section 9.3 contains provisions for the termination of an approved TFE before its Expiration Date, by either NERC or the Regional Entity. Because either NERC or the Regional Entity could determine that an approved TFE should be terminated before its Expiration Date, the following revision has been made to the second sentence of Section 9.3:

Following issuance to the Responsible Entity of a draft Spot Check report concluding that the approved TFE should be terminated or revised (including by advancement of the Expiration Date), and opportunity for the Responsible Entity to submit comments on the draft Spot Check report, the Regional Entity or NERC, if it has determined that the approved TFE should be terminated or revised, shall issue a notice of termination to the Responsible Entity (with a copy to NERC if the notice is issued by the Regional Entity) stating the Effective Date of termination of the approved TFE.

6. Section 12.2, Due Date for Annual Reports, of the TFE Procedure as originally submitted by NERC provided that “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 . . . .” Since the January 21 Order approved the TFE Procedure to be effective as of that date, this provision (which is now in Section 13.3 of the revised TFE Procedure) has been changed to state: “The first Annual Report shall cover the period through June 30, 2011 . . . .” While June 30, 2011 is the end of the fifth full calendar quarter ending after the effective date of the TFE Procedure, NERC believes that a reporting period ending at mid-year is more appropriate in terms of administrative convenience.

## V. CONCLUSION

For the reasons set forth in this compliance filing, the North American Electric Reliability Corporation respectfully requests that the Commission (1) approve the proposed revised version of Appendix 4D to the NERC Rule of Procedure set forth in **Attachment 1** to this filing, and (ii) accept this filing and **Attachments 1** and **2** to this filing as compliance with the directives in the Commission’s January 21, 2010 Order in this docket.

Respectfully submitted,

/s/ David N. Cook

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Chicago, Illinois this 21st day of April, 2010.

/s/ Owen E. MacBride  
Owen E. MacBride

*Attorney for North American Electric  
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**ATTACHMENT 1**

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

**CLEAN VERSION**



**April 12, 2010**  
**Revised for FERC Order**

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

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



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

**1.0 INTRODUCTION**

**1.1. Purpose**

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

**1.2. Authority**

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

**1.3. Scope**

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

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

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

CIP-007-2: R2.3, R3.2, 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 (i) they continue to expressly provide either (A) that compliance with their terms is required where or as technically feasible or (B) that technical limitations may preclude compliance with the terms of the requirement<sup>2</sup>; or (ii) so long as FERC does not direct that they be removed from the list of

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

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

Applicable Requirements. Other requirements of CIP Standards may become Applicable Requirements as the result of revisions to the CIP Standards in accordance with the NERC *Bylaws and Rules of Procedure* including Appendix 3A, *Reliability Standards Development Procedure*, or as a result of FERC directive. NERC shall maintain a current list of Applicable Requirements on its website.

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

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

## **2.0. DEFINITIONS**

For purposes of this Appendix, 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 13.0 of this Appendix.

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

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

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

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

**2.8 Confidential Information:** (i) Confidential business and market information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) is not technically possible or is precluded by technical limitations; or
- (ii) is operationally infeasible or could adversely affect reliability of the Bulk Electric System to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or

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

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

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

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

**3.4.** A TFE typically must be requested for, and will be approved only for, a limited duration, until a stated Expiration Date. The Responsible Entity will be expected to achieve Strict Compliance with the Applicable Requirement by the Expiration Date. Under limited, justified circumstances, a TFE Request may be approved without a specified Expiration Date, subject to periodic review to verify 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.

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

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



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

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

1. Responsible Entity name.
2. Responsible Entity NERC Compliance Registry ID.
3. TFE Request submittal date.
4. Whether the TFE Request is an original TFE Request or an amended TFE Request; and if it is an Amended TFE Request, the identification number of the original TFE Request.
5. Name, mailing address, phone number, facsimile number and E-mail address of the Responsible Entity’s technical contact person for the TFE Request.
6. Applicable Requirement for which the TFE is being requested.
7. Number of Covered Assets for which the TFE is being requested.
8. Whether the Responsible Entity is filing a similar TFE Request(s) with one or more other Regional Entities, and if yes, the name(s) of the other Regional Entity(ies).
9. The type(s) of equipment, process, or procedure at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement, for which the TFE is being requested.
10. The basis for the TFE Request from the criteria specified in Section 3.1.
11. A brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement.
12. The estimated impact on reliable operation of the Bulk Electric System of the Responsible Entity if the compensating measures and mitigating measures are not sufficient to achieve security for the Covered Assets, and cyber security is compromised.

13. A brief description of the compensating measures and/or mitigating measures that are planned or have been implemented in lieu of achieving Strict Compliance with the Applicable Requirement.
14. A statement as to whether or not the compensating measures and/or mitigating measures have been fully implemented at the time the TFE Request is submitted.
15. As applicable, (i) the actual implementation date(s) for the compensating measures and/or mitigating measures, and/or (ii) the proposed date(s) for implementing the proposed compensating measures and/or mitigating measures.
16. Whether the Responsible Entity has a proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement; if yes, the proposed Expiration Date and a description of the plan for terminating the TFE; if no, an explanation as to why a TFE with no Expiration Date is being requested.
17. Whether the TFE Request is supported, in whole or in part, by any of the following: Classified National Security Information; NRC Safeguards Information; or Protected FOIA Information.
18. A statement of the Responsible Entity's understanding of the requirement to submit timely periodic and other reports pertaining to the approved TFE.
19. A statement, signed and dated by the Responsible Entity's Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request and approved the proposed compensating measures and/or mitigating measures and the implementation plan, and that on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria specified in Section 3.1 of this Appendix.

**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. A statement of the basis, consistent with Section 3.1 of this Appendix, on which the Responsible Entity contends the TFE Request should be approved, with supporting documentation. Without limiting the content of this statement, it must include: (i) a description of the specific equipment, device(s), process(es) or procedure(s) at or associated with the Covered Asset(s) and subject to or required

by the Applicable Requirement, for which the TFE is requested; and (ii) an explanation of why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement.

4. A description of the compensating measures and/or mitigating measures the Responsible Entity proposes to implement and maintain as an alternate approach to achieving Strict Compliance with the Applicable Requirement, with supporting documentation. Without limiting the content of this description, it must include an explanation of how, and the extent to which, the proposed compensating measures and/or mitigating measures will reduce or prevent any adverse impacts on (i) the reliable operation of the Covered Asset(s) and (ii) the reliable operation of the Element(s) and Facility(ies) of the Bulk Electric System for which the Responsible Entity is responsible, resulting from the failure to achieve Strict Compliance with the Applicable Requirement, including reducing or eliminating any vulnerabilities resulting from lack of Strict Compliance.
5. 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.
6. The Responsible Entity's proposed time schedule for implementing the proposed compensating measures and/or mitigating measures. The TFE Request may identify compensating measures and or mitigating measures that have already been implemented by the Responsible Entity.
7. The Responsible Entity's proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement, including the Responsible Entity's proposed Expiration Date. The Responsible Entity should either (i) describe the specific steps it plans to take to achieve Strict Compliance and the planned schedule for each step, including the date by which the Responsible Entity intends to achieve Strict Compliance with the Applicable Requirement, and/or (ii) describe the specific research, design, analytical, testing or other activities the Responsible Entity intends to engage in to determine a means of achieving Strict Compliance with the Applicable Requirement, and the Responsible Entity's proposed time schedule for these activities.
8. If the Responsible Entity contends it will not be possible for it to achieve Strict Compliance with the Applicable Requirement and that the TFE being requested should have no Expiration Date, an explanation of why it will not be possible for the Responsible Entity to establish a date by which it can achieve Strict Compliance with the Applicable Requirement, why the TFE Request should be approved with no Expiration Date, and under what conditions, if any, the Responsible Entity will be able to achieve Strict Compliance with the Applicable Requirement at a future unknown and unspecified date.

9. The Responsible Entity’s commitment to file quarterly reports with the Regional Entity on the Responsible Entity’s progress (i) in implementing the proposed compensating measures and/or mitigating measures, and (ii) towards achieving Strict Compliance with the Applicable Requirement.
10. If the proposed Expiration Date is more than one (1) year from the date the TFE Request is submitted, or if the Responsible Entity contends the TFE should have no Expiration Date, the Responsible Entity’s agreement to submit annual reports to the Regional Entity on the continued need for and justification for the TFE, for so long as the TFE remains in effect.
11. If the TFE Request is supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information, a statement identifying which of these categories each such item of information falls into and explaining why each such item of information is Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information. If the Responsible Entity is prohibited by law from disclosing any Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), the TFE Request shall identify the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is subject to such restrictions on disclosure and shall identify the criteria which a person must meet in order to be an Eligible Reviewer of the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information.
12. A statement, signed and dated by the Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request and approved the compensating measures and/or mitigating measures and the implementation plan, and on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria in Section 3.1 of this Appendix.

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

**4.4 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 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 located<sup>4</sup>; 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 (61<sup>st</sup>) calendar day after the Regional Entity received the TFE Request and continuing thereafter in accordance with Section 5.3.

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

**5.1.5.** If the Regional Entity determines, based on its review of the Part A Required Information provided by the Responsible Entity, that the TFE Request (i) is not for an Applicable Requirement, or (ii) does not contain all Part A Required Information, or (iii) does not satisfy the criteria for approval of a TFE in Section 3.1 of this Appendix, the Regional Entity shall send a notice to the Responsible Entity, with a copy to NERC, rejecting the TFE Request. The notice shall state an Effective Date which shall be no less than thirty-one (31) calendar days and no

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

more than sixty-one (61) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than sixty-one (61) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice.

**5.1.6.** If the Regional Entity rejects the TFE Request because not all Part A Required Information was provided, the Regional Entity’s notice shall identify the Part A Required Information that was not provided in the TFE Request. The Responsible Entity may resubmit the TFE Request with all Part A Required Information included. If the Responsible Entity resubmits the TFE Request with all Part A Required Information included prior to the Effective Date, the 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 may also, but is not required to, state any revisions to the TFE Request the Regional Entity has identified, based on its review of the TFE Request, that, if made by the Responsible Entity, would result in approval of the TFE Request. Such revisions may include, but are not limited to, changes to the Responsible Entity's proposed (i) compensating measures and/or mitigating measures, (ii) implementation schedules, or (iii) Expiration Date. If the Responsible Entity submits an amended TFE Request to the Regional Entity incorporating, to the Regional Entity's satisfaction, the revisions to the TFE Request set forth in the notice of disapproval, then the Regional Entity shall issue a notice, in accordance with Section 5.2.4, approving the revised TFE Request.

**5.2.6.** A notice disapproving a TFE Request shall state an Effective Date, which shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice. Following the Effective Date, the Responsible Entity is subject to issuance of a notice of Alleged Violation by the Regional Entity with respect to the Applicable Requirement that was the subject of the disapproved TFE Request, 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. If the Regional Entity has disapproved the TFE Request and determined there were exceptional circumstances justifying an Effective Date more than ninety-one (91) days after the date of issuance of the notice, the Regional Entity's report to NERC shall include a description of such exceptional circumstances.



### **5.3 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:

- (1) 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;
- (2) 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; and
- (3) if the TFE Request is rejected or disapproved, and is found by the Regional Entity, NERC or FERC to have been fraudulent or submitted not in good faith, the provisions of this Section 5.3 shall not apply, the Responsible Entity shall be subject to imposition of findings of violations and imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement that was the subject of the TFE Request, for the entire period subsequent to the date the TFE Request was submitted, and the Responsible Entity’s fraudulent or not-in-good-faith submission of the TFE Request shall be an aggravating factor in determining the amounts of penalties or sanctions to be imposed on the Responsible Entity for such violations.

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

**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 (with a copy to NERC if the notice is issued by the Regional Entity) stating the Effective Date of termination of the approved TFE. The Effective Date shall be no less than sixty-one (61) calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice of termination, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar

days after the issuance of the notice of termination due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice of termination.

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

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

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

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

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

1. NERC will review the reports of approved and disapproved TFE Requests submitted by the Regional Entities pursuant to Section 5.2.7 as the reports are received, and based on its review of such reports, NERC will issue to the Regional Entities, as Confidential Information, such guidance as NERC deems appropriate to achieve greater consistency in approval and disapproval of TFE Requests in the respects listed in Section 11.1.
2. NERC will maintain, as Confidential Information, based on reports submitted by Regional Entities, a catalogue of the types of Covered Assets for which TFE

Requests from the various Applicable Requirements have been approved and disapproved. The catalogue will be accessible to the Regional Entities for their use in connection with their substantive reviews of TFE Requests.

3. NERC and the Regional Entities will form a committee comprised of NERC and Regional Entity representatives involved in the review of TFE Requests and other critical infrastructure program activities, which shall be charged to review approved and disapproved TFE Requests for consistency and to issue such guidance to the Regional Entities, as Confidential Information, as the committee deems appropriate to achieve greater consistency in approval and disapproval of TFE Requests in the respects listed in Section 11.1.

## **12.0 CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION**

Except as expressly stated in this Section 12.0, 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.

- (vii) All guidance issued to Regional Entities pursuant to Section 11.2 by NERC or by the committee described in Section 11.2(3), and all minutes of meetings of the committee and discussions between or among its members.

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

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

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

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

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

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

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

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

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

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

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

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

### **13.2. Submission of Quarterly Reports by Regional Entities to NERC**

In order to facilitate timely preparation of the Annual Report, each Regional Entity shall submit to NERC, within thirty (30) calendar days following the end of each calendar quarter, a report listing (i) the types of Covered Assets with respect to which TFE Requests were approved during such quarter, and (ii) final totals for the quarter of TFE Requests accepted and rejected and TFE Requests approved and disapproved. The reports submitted by the Regional Entities to NERC shall be Confidential Information.

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

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



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

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

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

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

**ATTACHMENT 2**

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

**REDLINED VERSION**

~~October 28, 2009~~  
April 12, 2010  
Revised for FERC Order

**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS  
  
APPENDIX 4D TO THE RULES OF PROCEDURE**

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

**1.0 INTRODUCTION**

**1.1. Purpose**

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation (NERC) provides the procedure by which a Responsible Entity may request and receive an exception from Strict Compliance with the terms of a requirement of certain NERC Critical Infrastructure Protection (CIP) Standards on the grounds of technical feasibility or technical limitations, ~~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.<sup>1</sup>

**1.2. Authority**

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

**1.3. Scope**

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

CIP-005-~~12~~: R2.4, R2.6, R3.1 and R3.2

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

CIP-007-~~12~~: R2.3, R3.2, 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 (i) they continue to expressly provide either ~~(iA)~~ that compliance with their terms is required where or as technically feasible or ~~(iB)~~ that technical limitations may preclude compliance with the terms of the requirement;<sup>2</sup> or (ii) so long as FERC does not direct that they be removed from the list of

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

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

[Applicable Requirements.](#) Other requirements of CIP Standards may become Applicable Requirements as the result of revisions to the CIP Standards in accordance with the NERC *Bylaws and Rules of Procedure* including Appendix 3A, *Reliability Standards Development Procedure*, [or as a result of FERC directive. NERC shall maintain a current list of Applicable Requirements on its website.](#)

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

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

## **2.0. DEFINITIONS**

For purposes of this Appendix, 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~~13.0 of this Appendix.

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

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

**2.4 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.

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

**2.9.2.8 Confidential Information:** (i) Confidential business and market information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) 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.

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

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

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

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

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

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

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

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

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



**2.192.18 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.

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

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

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

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

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

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

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

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

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

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

**3.1.** A Responsible Entity may request and obtain approval for [a TFE on the grounds that 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, [in the determination of the Regional Entity](#), outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (v) would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or
- (vi) would require the incurrence of costs that, [in the determination of the Regional Entity](#), far exceed the benefits to the reliability of the Bulk Electric System of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset, 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 is minimal in the determination of the Regional Entity.](#)

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

**3.3.** [The burden to justify approval of a TFE Request in accordance with the provisions of this Appendix is on the Responsible Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Appendix, to make all determinations as to whether a TFE Request has met the criteria for approval.<sup>3</sup> NERC and the Regional Entities shall](#)

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<sup>3</sup> [If a Regional Entity that is a Responsible Entity seeks a TFE in its role as a Responsible Entity, the Regional Entity shall submit its TFE Request to, as applicable, NERC or the Regional Entity that has assumed, by agreement approved by NERC and FERC, compliance monitoring and enforcement responsibilities with respect to the first Regional Entity's registered functions, as](#)

[carry out the activities described in Section 11.0 of this Appendix to provide consistency in the review and approval or disapproval of TFE Requests across Regional Entities and across TFE Requests.](#)

3.4. A TFE typically must be requested for, and will be approved only for, a limited duration, until a stated Expiration Date. The Responsible Entity will be expected to achieve Strict Compliance with the Applicable Requirement by the Expiration Date. Under limited, justified circumstances, a TFE Request may be approved without a specified Expiration Date, subject to periodic review to verify 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.

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[applicable. In such case NERC or the second Regional Entity, as applicable, will perform the duties and responsibilities of the "Regional Entity" specified in this Appendix.](#)

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

1. Responsible Entity name.
2. Responsible Entity NERC Compliance Registry ID.
3. TFE Request submittal date.
4. Whether the TFE Request is an original TFE Request or an amended TFE Request; and if it is an Amended TFE Request, the identification number of the original TFE Request.
5. Name, mailing address, phone number, facsimile number and E-mail address of the Responsible Entity’s technical contact person for the TFE Request.
6. Applicable Requirement for which the TFE is being requested.
7. Number of Covered Assets for which the TFE is being requested.
8. Whether the Responsible Entity is filing a similar TFE Request(s) with one or more other Regional Entities, and if yes, the name(s) of the other Regional Entity(ies).
9. The type(s) of equipment, process, or procedure at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement, for which the TFE is being requested.

10. The basis for the TFE Request from the criteria specified in Section 3.1.
11. A brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement.
12. The estimated impact on reliable operation of the Bulk Electric System of the Responsible Entity if the compensating measures and mitigating measures are not sufficient to achieve security for the Covered Assets, and cyber security is compromised.
13. A brief description of the compensating measures and/or mitigating measures that are planned or have been implemented in lieu of achieving Strict Compliance with the Applicable Requirement.
14. A statement as to whether or not the compensating measures and/or mitigating measures have been fully implemented at the time the TFE Request is submitted.
15. As applicable, (i) the actual implementation date(s) for the compensating measures and/or mitigating measures, and/or (ii) the proposed date(s) for implementing the proposed compensating measures and/or mitigating measures.
16. Whether the Responsible Entity has a proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement; if yes, the proposed Expiration Date and a description of the plan for terminating the TFE; if no, an explanation as to why a TFE with no Expiration Date is being requested.
17. Whether the TFE Request is supported, in whole or in part, by any of the following: Classified National Security Information; NRC Safeguards Information; or Protected FOIA Information.
18. A statement of the Responsible Entity's understanding of the requirement to submit timely periodic and other reports pertaining to the approved TFE.
19. A statement, signed and dated by the Responsible Entity's Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request and approved the proposed compensating measures and/or mitigating measures and the implementation plan, and that on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria specified in Section 3.1 of this Appendix.

**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.~~
3. ~~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).~~
4. ~~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.~~5. 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.
6. ~~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.
7. ~~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.

8. ~~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.
9. ~~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.
10. ~~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.
11. ~~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.~~12. A statement, signed and dated by the Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request and approved the compensating measures and/or mitigating measures and the implementation plan, and on behalf



of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria in Section 3.1 of this Appendix.

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

**4.4 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 located<sup>34</sup>; 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 (61<sup>st</sup>) calendar day after the Regional Entity received the TFE Request and continuing thereafter in accordance with Section 5.3.

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<sup>34</sup> The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Regional Entity); [Texas Reliability Entity](#); and WECC (Western Electricity Coordinating Council); ~~and NERC (applicable where NERC, rather than a Regional Entity, is the Compliance Enforcement Authority for the Responsible Entity).~~

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

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

**5.1.6.** If the Regional Entity rejects the TFE Request because not all Part A Required Information was provided, the Regional Entity's notice shall identify the Part A Required Information that was not provided in the TFE Request. The Responsible Entity may resubmit the TFE Request with all Part A Required Information included. If the Responsible Entity resubmits the TFE Request with all Part A Required Information included prior to the Effective Date, the 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~~may also, but is not required to, state any revisions to the TFE Request ~~it is able to identify~~the Regional Entity has identified, based on its review of the TFE Request, that, if made by the Responsible Entity, would result in approval of the TFE Request. Such revisions may include, but are not limited to, changes to the Responsible Entity's proposed (i) compensating measures and/or mitigating measures, (ii) implementation schedules, or (iii) Expiration Date. If the Responsible Entity submits an amended TFE Request to the Regional Entity incorporating, to the Regional Entity's satisfaction, the revisions to the TFE Request set forth in the notice of disapproval, then the Regional Entity shall issue a notice, in accordance with Section 5.2.4, approving the revised TFE Request.

**5.2.6.** A notice disapproving a TFE Request shall state an Effective Date, which shall be no ~~earlier~~less than ~~the sixty-first~~one (61<sup>st</sup>) ~~calendar day following the date of~~calendar days and no more than ninety-one (91) calendar days after the date of issuance of the notice, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the date of issuance of the notice due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice. Following the Effective Date, the Responsible Entity is subject to issuance of a notice of Alleged Violation by the Regional Entity with respect to the Applicable Requirement that was the subject of the disapproved TFE Request, 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. If the Regional Entity has disapproved the TFE Request and determined there were exceptional circumstances justifying an Effective Date more than ninety-one (91) days after the date of issuance of the notice, the Regional Entity’s report to NERC shall include a description of such exceptional circumstances.

### **5.3 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 :

- ~~(1)~~ 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~~
- ~~(2)~~ 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; and

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

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

**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 (with a copy to NERC if the notice is issued by the Regional Entity) stating the Effective Date of termination of the approved TFE. The Effective Date shall be no ~~earlier than~~ less than sixty-~~first~~<sup>st</sup>one (61<sup>st</sup>) calendar ~~day~~days and no more than ninety-one (91) calendar days after the date of issuance of the notice of termination, unless the Regional Entity determines there are exceptional circumstances that justify a later Effective Date. If the Regional Entity determines the Effective Date should be more than ninety-one (91) calendar days after the issuance of the notice of termination due to exceptional circumstances, the Regional Entity shall include a detailed statement of the exceptional circumstances in the notice of termination.

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

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

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

**11.1.** NERC and the Regional Entities will engage in the activities specified in this Section 11.0 for the purpose of assuring consistency in the review, approval and disapproval of TFE Requests (i) among the Regional Entities, (ii) among different types of Covered Assets that are subject to the same Applicable Requirement, (iii) with respect to the application of the criteria specified in Section 3.1 for approval of TFE Requests, including the comparison of safety risks and costs of Strict Compliance to reliability benefits of Strict Compliance, and (iv) with



respect to the types of mitigating measures and compensating measures that are determined to be appropriate to support approval of TFE Requests.

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

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

## **12.0 CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION**

**~~11.1.~~**—Except as expressly stated in this Section ~~11.0,12.0~~, 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.~~

- (vii) [All guidance issued to Regional Entities pursuant to Section 11.2 by NERC or by the committee described in Section 11.2\(3\), and all minutes of meetings of the committee and discussions between or among its members.](#)

## ~~12.0~~13.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES

### ~~12.1~~13.1 Contents of Annual Report

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

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

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

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

(ii) Categorization of the submitted and approved TFE Requests to date by broad categories such as the general nature of the TFE Request ~~and~~, the Applicable Requirements covered by submitted and approved TFE Requests, [and the types of Covered Assets that are the subject of submitted and approved TFE Requests](#);

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

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

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

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

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

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

### 13.2. Submission of Quarterly Reports by Regional Entities to NERC

In order to facilitate timely preparation of the Annual Report, each Regional Entity shall submit to NERC, within thirty (30) calendar days following the end of each calendar quarter, a report listing (i) the types of Covered Assets with respect to which TFE Requests were approved during such quarter, and (ii) final totals for the quarter of TFE Requests accepted and rejected and TFE Requests approved and disapproved. The reports submitted by the Regional Entities to NERC shall be Confidential Information.

#### ~~12.2.13.3.~~ **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, June 30, 2011,~~ and shall be filed with FERC and with other Applicable Governmental Authorities no later than 90 days after the end of such calendar quarter. Subsequent Annual Reports shall be filed at one year intervals thereafter.

#### ~~12.3.13.4.~~ **Annual Report to be a Public Document; Confidential Appendix**

~~The~~It is the intent of this Appendix that 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. However, if NERC determines it is necessary to include any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information in an Annual Report in order to satisfy the information requirements specified in this Procedure or required by FERC or other Applicable Governmental Authorities, such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall be contained in a separate non-public, confidential appendix to the Annual Report. Prior to submitting to FERC or another Applicable Governmental Authority a non-public, confidential appendix that provides specific Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information of a particular Responsible Entity and identifies the Responsible Entity or one of its Facilities by name, NERC shall provide at least twenty-one (21) days advance notice to the Responsible Entity. The non-public, confidential appendix shall be submitted to FERC and other Applicable Governmental Authorities in accordance with their procedures for receiving confidential, proprietary and other protected information.

#### ~~12.4.13.5.~~ **Responsible Entities Must Cooperate in Preparation of Annual Report**

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