

**NERC**

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

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SECRETARY

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FEDERAL ENERGY  
REGULATORY COMMISSION

October 12, 2007

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

Dear Ms. Bose:

**Re: *North American Electric Reliability Corporation, Docket Nos. RM06-16-000;  
RR08-\_\_-000***

The North American Electric Reliability Corporation ("NERC") hereby submits to the Commission for approval proposed new Section 1600 to be included in the NERC Rules of Procedure. This proposed amendment to the NERC Rules of Procedure has been approved by the NERC Board of Trustees.

Respectfully submitted,

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**Exhibit A:** Proposed Section 1600 to the NERC Rules of Procedure

**Exhibit B:** Summary of Industry Comments Received on Proposed Section 1600 Prior to the Instant Filing

**Exhibit C:** Redline showing the Draft Proposed Rule upon which the Industry Provided Comment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION ) Docket No. RM06-16-000  
CORPORATION ) RR08-\_\_-000

**REQUEST FOR APPROVAL OF SECTION 1600 OF THE RULES OF  
PROCEDURE OF NORTH AMERICAN ELECTRIC RELIABILITY  
CORPORATION**

**I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) hereby requests the Federal Energy Regulatory Commission (“Commission” or “FERC”) to approve, in accordance with Section 215(d) of the Federal Power Act (“FPA”)<sup>1</sup> and Sections 39.2(d), 39.3 and 39.10 of the Commission’s regulations, 18 C.F.R. §§ 39.2(d), 39.3 and 39.10 (2007), a new Section 1600 to be added to the NERC Rules of Procedure. Proposed Section 1600 would establish a process for NERC or a regional entity to issue requests for data or information that is necessary for either organization to fulfill its obligations under Section 215 of the FPA.

**Exhibit A** to this filing sets forth the proposed Section 1600 to the NERC Rules of Procedure. **Exhibit B** contains a summary of industry comments received on proposed Section 1600 prior to the instant FERC filing. **Exhibit C** contains a redline showing the changes that were made to the original draft proposed rule following the industry comment period.

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<sup>1</sup> 16 U.S.C. 824o.

## **II. NOTICES AND COMMUNICATIONS**

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

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\*Persons to be included on the Commission's service list are indicated with an asterisk.

## **III. STATEMENT OF BASIS AND PURPOSE OF PROPOSED SECTION 1600 OF THE NERC RULES OF PROCEDURE**

### **A. General**

Section 39.10 of the Commission's regulations, 18 C.F.R. § 39.10, requires NERC, as the electric reliability organization in the U.S. ("ERO"), to file with the Commission for its approval any proposed ERO rule. The filing must include a statement of the basis and purpose of the proposed rule and contain a description of the proceedings conducted by the ERO to develop the proposal. The first requirement is addressed in this Section III and the second requirement is addressed in Section IV of this filing.

The purpose of the instant filing is to amend the NERC Rules of Procedure to establish a new Section 1600 that sets forth a process for NERC or a regional entity to issue requests for data or information that is necessary for either organization to fulfill its obligations under Section 215 of the FPA.

The general nature of the proposed rule is that NERC will go through a notice and comment period with the industry prior to sending the industry (or those segments of the industry to which a request is applicable) requests for data or information. Following the comment period and modification of the proposed request as appropriate in light of the comments, the data request must be approved by the NERC Board of Trustees before it can be formally issued. Parties would have the ability to appeal, within 30 days, the Board's authorization of issuance of the data request to challenge the issuance of a data request before the FERC or another applicable governmental authority. Only owners, operators and users of the bulk-power system that are registered in the NERC Compliance Registry (or such subset of those entities as is specified by the particular request) will be obligated to respond to an authorized request for data or information.

Section 1600, however, will not be the exclusive means by which NERC or a regional entity can request data or information from owners, operators, and users of the bulk power system. Because other sections of the NERC Rules of Procedure, such as provisions regarding compliance and enforcement matters, also require the submission of data or information, those sections, rather than proposed Section 1600, would govern those matters. In addition, where an approved reliability standard requires the submission of data or information, the reliability standard would govern.

## B. Legal Basis for the Amendment

The legal basis in the United States for this amendment to the NERC Rules of Procedure stems from FERC's Order No. 672<sup>2</sup> at paragraph 114, which adopted Section 39.2(d) of the Commission's regulations (18 C.F.R. §39.2(d)):

114. The Commission agrees with commenters that, to fulfill its obligations under this Final Rule, the ERO or a Regional Entity will need access to certain data from users, owners and operators of the Bulk-Power System. Further, the Commission will need access to such information as is necessary to fulfill its oversight and enforcement roles under the statute. Section 39.2 of the regulations will include the following requirement:

(d) Each user, owner or operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall provide the Commission, the Electric Reliability Organization and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by the Commission and set out in the Rules of the Electric Reliability Organization and each applicable Regional Entity. The Electric Reliability Organization and each Regional Entity shall provide the Commission such information as is necessary to implement section 215 of the Federal Power Act.

To determine whether new reliability standards are needed, NERC will need information on present practices to ensure that any proposed new standard improves reliability.

Section 39.2(d) of the Commission's regulations authorizes both the ERO and regional entities to request data and information necessary to implement Section 215 of the FPA and as set out in the rules of the ERO and the regional entities, and obligates users, owners and operators of the bulk-power system to respond to such requests. Data that NERC requests from owners, operators and users of the bulk power system will be made available to regional entities if such information is needed by them to perform their

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<sup>2</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, FERC Stats. & Regs. [Regs. Preambles] ¶ 31,204 at P114 (2006) ("Order No. 672").

obligations under Section 215 or delegated authority, such as the assessment of power supply adequacy in a region. Section 39.2(d) also authorizes a regional entity to procure information independent of an ERO request.

**C. Specific Provisions of Proposed Section 1600**

Proposed Section 1600 consists of Rules 1601 through 1605.

Rule 1601 defines the scope of a NERC or regional entity request for data or information:

Within the United States, NERC and regional entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission's regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and regional entities may request comparable data or information, using such authority as may exist pursuant to these rules and as may be granted by applicable governmental authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to requirements contained in any Reliability Standard to provide data or information; the requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

Rule 1602 sets forth the procedure for authorizing a NERC request for data or information:

1. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
- 1.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and

jurisdiction) that will be required to provide the data or information (“reporting entities”); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., “confidential,” “critical energy infrastructure information,” “aggregating” or “identity masking”); and (vi) an estimate of the relative burden imposed on the reporting entities to accommodate the data or information request.

- 1.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an estimate of the burden imposed on the reporting entities to accommodate the modified data or information request, and (iii) any other items from paragraph 1.1 that require updating as a result of the modifications.
2. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC’s evaluation of the comments and recommendations, to the Board of Trustees.
3. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
4. NERC may make minor changes to an authorized request for data or information without board approval. However, if a reporting entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require board approval before they are implemented.
5. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the applicable governmental authority.

Rule 1603 provides that owners, operators and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data or information:

Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information.

The reference to entities included on the NERC Compliance Registry avoids the creation of two classes of owners, operators and users – one subject to reliability standards and another subject only to the data rule.

Rule 1604 sets forth the procedures by which a regional entity may ask NERC to authorize a request for data or information by the regional entity:

A regional entity may request that NERC seek authorization for a request for data or information to be applicable within the footprint of the regional entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600. The regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural elements as are included in this Section 1600.

As provided in the last sentence of Rule 1604, regional entities may also establish their own rules for requesting data or information they need to meet their obligations under Section 215, so long as such rules are consistent with Section 1600.<sup>3</sup>

Rule 1605 addresses the protection of confidential information and critical energy infrastructure information submitted in response to a data or information request:

If the approved data or information request includes a statement under Rule 1602.1.1(v) that the requested data or information will be held confidential or treated as critical energy infrastructure information, then the applicable provisions of Section 1500 will apply without further action by a submitting entity. A submitting entity may designate any other data or information as confidential pursuant to the provisions of Section 1500, and NERC or the regional entity shall treat that data or information in accordance with Section 1500. NERC or a regional entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

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<sup>3</sup> Any such regional entity rule would, of course, have to be submitted to NERC for approval and then submitted to the Commission for approval, as required by 18 C.F.R. § 39.10.

Thus, Rule 1605 makes clear that the confidentiality provisions in Section 1500 of the NERC Rules of Procedure will apply to information submitted in response to a NERC data request.

#### **IV. APPROVAL PROCESS**

In accordance with Section 1400 of NERC's Rules of Procedure, NERC posted the proposed Section 1600 change for a 45-day comment period, from May 21, 2007 to July 6, 2007. Sixteen sets of comments were submitted to NERC on proposed Section 1600 prior to consideration by NERC's Board of Trustees. These comments are posted at [http://www.nerc.com/~filez/rules\\_of\\_procedure.html](http://www.nerc.com/~filez/rules_of_procedure.html).<sup>4</sup> As reflected in Exhibit C and as discussed below, the proposed provisions were modified prior to submission to the Board of Trustees to take account of many of the comments received. The NERC Board of Trustees considered and approved the proposed new Section 1600 to the NERC Rules of Procedure at its meeting on August 1, 2007.

Rule 1601 was expanded, as suggested by Edison Electric Institute ("EEI") and others, to make clear that Section 1600 does not apply to compliance and enforcement matters. NERC has included in Rule 1601 a similar statement regarding data requirements contained in reliability standards — the reliability standards govern. Making those changes allowed deletion of originally-proposed Rule 1605 (Non-Exclusivity), a section that many commenters found confusing.

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<sup>4</sup> Exhibit B contains a summary of industry comments received on proposed Section 1600 prior to the board's consideration. Exhibit C is a redline version showing the changes that were made to the draft proposed rule following the industry comment period.

In response to several comments, the phrase “foster NERC’s ability to meet its obligations” in Rule 1602.1.1 was changed to “necessary for NERC to meet its obligations.”

Several commenters expressed concern about the reach of the proposed data rule, stating it could require many smaller entities to supply data. In response, the reach of the proposed rule was modified to cover only those owners, operators and users of the bulk-power system registered on the NERC Compliance Registry (see proposed Rule 1603).

Several commenters expressed concern that the proposed rule did not adequately address confidentiality. In response, a new provision, Rule 1605, Confidentiality, was added. As described in Section III, Rule 1605 provides that the confidentiality provisions in Section 1500 of the Rules of Procedure will apply to requests for information under Section 1600.

As requested by several commenters, Rule 1604 was revised to require that regional entity data request procedures must contain the same procedural elements as are contained in Section 1600.

Minor technical edits were also made to the originally-posted Section 1600 to address other issues raised in the comments.

Wisconsin Electric Power Company commented that the proposed rule is unnecessary because NERC already has sufficient authority to collect information, and because NERC has successfully collected information on a voluntary basis for many years. However, NERC believes the proposed rule is necessary and appropriate. First, NERC is no longer a voluntary organization, but rather now has mandatory, statutory obligations. Further, a broader segment of the electric industry is now subject to NERC’s

authority as the ERO. Finally, it is appropriate that the specific procedures NERC will (and must) follow in requesting information from the industry should be embodied in its ERO rules that the Commission has approved.

Florida Reliability Coordinating Council (“FRCC”) suggested that the draft rule should be revised to include requirements to seek input and guidance from the appropriate technical committees before developing a proposed data request. FRCC also suggested that the appropriate technical committee should give its approval before submitting a proposed data request to the board for approval. While NERC does not believe it necessary to specify those procedures in Section 1600, NERC expects the technical committees and their subgroups will be the source of most of the proposals for data requests (particularly those relating to possible development of new or modified reliability standards) and they will be involved as the data requests move through the development and approval process.

A few commenters expressed confusion about the term “applicable governmental authority” and wondered whether entities could forum shop<sup>5</sup>. “Applicable governmental authority” is the term used to refer to the governmental authority with oversight of the electric reliability organization in the respective jurisdictions. Within the United States, the Commission is vested with such authority. Within the Canadian provinces, it is generally the regulatory body in each province.

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<sup>5</sup> See, e.g., Comments of Southwest Transmission Dependent Utility Group (SWTDUG) including: Aguila Irrigation District, Ak-Chin Energy Services, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 6, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, City of Needles, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

Several commenters raised issues that are more appropriately addressed in the context of a commenting on a particular proposed data request, rather than in the context of formulating the rule establishing the procedural framework for authorizing data requests.<sup>6</sup>

One major issue not fully addressed by the revisions is the question raised by the Canadian Electricity Association (“CEA”) (and joined in by several other commenters) regarding NERC’s authority to request data or information from entities outside the United States. The issue raised by CEA’s comment is, what stands *behind* the data request in the event the data request is not complied with. CEA correctly noted that no jurisdiction in Canada has yet provided legal authority to NERC to request data equivalent to the authority contained in the Commission’s regulations, as explained above.

Within the United States, a failure to comply with an approved data request would constitute a violation of the Commission’s regulations (Section 39.2(d)) and of the Commission’s order approving Section 1600 of the Rules of Procedure; therefore if necessary, resort could be had to the enforcement mechanisms available to the Commission to deal with violations of its regulations and orders. This is authority that the Commission could exercise, not authority that is available to NERC. However, NERC could request that FERC exercise such authority. NERC’s compliance and enforcement authority, including the authority to impose penalties and other sanctions, is limited to violations of reliability standards; it does not extend to NERC’s Rules of Procedure.

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<sup>6</sup> See Comments of Siemens and First Energy Corporation.

CEA suggested that Section 1600 be modified to state that NERC and regional entities may request comparable data or information “where the authority to request such data or information is provided by the respective jurisdiction.” NERC did not make that modification for two reasons. First, no jurisdiction in Canada has granted such authority to NERC at this time. Second, the lack of authority goes more to what happens in the event an entity fails to provide the requested data, rather than to the authority to ask for the data in the first place. NERC believes it more in keeping with the principles adopted by the Bilateral Electric Reliability Oversight Group to have a consistent approach to the administration of reliability on both sides of the border, while at the same time respecting the sovereignty of each country and the different laws that may be in place in the different jurisdictions. In practical terms, this means there may not be an enforcement mechanism in the Canadian jurisdictions to compel compliance with a data request, but that should not negate NERC’s ability to make the data request in the first instance.

An independent basis exists for compliance with authorized NERC data requests by certain Canadian entities. Those Canadian entities that are members of NERC have agreed, as a condition of membership, that they are bound to follow NERC’s Rules of Procedure as they may be amended from time to time. Pursuant to Article II, Section 3 of NERC’s bylaws, members undertake the following obligation as a condition of membership:

Each member shall agree, in writing, to accept the responsibility to promote, support, and comply with the purposes and policies of the Corporation as set forth in its Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards as from time to time adopted, approved, or amended.

Therefore, all NERC members are obligated to comply with data requests duly authorized under the proposed rule.

V. CONCLUSION

NERC requests that the Commission, after providing notice and opportunity for public comment, approve proposed Section 1600 to the NERC Rules of Procedure, and make Section 1600 effective as soon as practicable under the Commission's rules and regulations.

Respectfully submitted,

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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 Washington, D.C. this 12<sup>th</sup> day of October, 2007.

/s/ Rebecca J. Michael

Rebecca J. Michael

*Attorney for North American Electric  
Reliability Corporation*

**PROPOSED RULE ON REQUESTS FOR DATA OR INFORMATION**

**SECTION 1600 — REQUESTS FOR DATA OR INFORMATION**

**1601. Scope of a NERC or Regional Entity Request for Data or Information**

Within the United States, NERC and regional entities may request data or information that is necessary to meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission's regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and regional entities may request comparable data or information, using such authority as may exist pursuant to these rules and as may be granted by applicable governmental authorities in those other jurisdictions. The provisions of Section 1600 shall not apply to requirements contained in any Reliability Standard to provide data or information; the requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal Power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

**1602. Procedure for Authorizing a NERC Request for Data or Information**

1. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
  - 1.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information is necessary for NERC to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information ("reporting entities"); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., "confidential," "critical energy infrastructure information," "aggregating" or "identity masking"); and (vi) an estimate of the relative burden imposed on the reporting entities to accommodate the data or information request.
  - 1.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; (ii) an

## EXHIBIT A

estimate of the burden imposed on the reporting entities to accommodate the modified data or information request, and (iii) any other items from paragraph 1.1 that require updating as a result of the modifications.

2. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC's evaluation of the comments and recommendations, to the Board of Trustees.
3. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
4. NERC may make minor changes to an authorized request for data or information without board approval. However, if a reporting entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require board approval before they are implemented.
5. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to the applicable governmental authority.

### **1603. Owners, Operators, and Users to Comply**

Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information.

### **1604. Requests by Regional Entity for Data or Information**

A regional entity may request that NERC seek authorization for a request for data or information to be applicable within the footprint of the regional entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600. The regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural elements as are included in this Section 1600.

### **1605. Confidentiality**

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as critical energy infrastructure information, then the applicable provisions of Section 1500 will apply without further action by a submitting entity. A submitting entity may designate any other data or information as confidential pursuant to the provisions of

## **EXHIBIT A**

Section 1500, and NERC or the regional entity shall treat that data or information in accordance with Section 1500. NERC or a regional entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.

**Summary of Comments on Proposed Data Request Rule****American Public Power Association**

Scope of Section 1601 should be clarified to indicate that Section 1600 does not encompass information required to be submitted by a reliability standard or data or information requested by or used by compliance and enforcement staff. Substitute “is necessary” for “to foster NERC’s ability to meet its obligations.” Section 1604 should state that regional procedures should include the same or similar procedures. Section 1605 is unclear.

**Canadian Electricity Association**

Rule cites as its authority FERC regulations and the U.S. legislation; concerned that proposed rule may give NERC authority it does not have over Canadian entities. NERC appears to be using the rules themselves to create authority over Canadian entities, rather than appropriate authorization from relevant Canadian authorities. Proposes limiting language.

**Dynegy Inc.**

Establish one reporting requirement rather than allow each region to develop its own. Limit reliability reporting to units 25 MW and higher and allow combined cycle units to be reported as a block. Support adopting current NERC GADS reporting as standard for all regions.

**Edison Electric Institute**

The Section 1600 process should be limited to data needed to prepare reports or assessments required under Section 215 of the Federal Power Act. The mechanism should not be used for compliance or enforcement purposes. Section 1600 should be tied more closely to the reports and assessments NERC may be required to do under Section 215. Any regional procedures should include at least the same procedural provisions and protections as Section 1600. It is essential that confidential treatment of data is assured. The protections of Section 1500 should be maximized. NERC or regional entities should also be able to establish additional protections, such as third-party aggregators, to avoid antitrust concerns. EEI provided suggested edits to address its concerns.

**Electricity Consumers Resource Council**

The scope of the rule is too broad – it should not apply to all users. It should be only on those who qualify as merchant generators and otherwise qualify for registration. No justification for expanding the universe of customers subject to the information requirements. NERC should post each proposed data request to obtain stakeholder comment on the necessity of the information and the associated reporting burden.

**First Energy Corporation**

Establish a lower size limit (suggested 50 MWe) on what has to be reported. Control Area Operator should not be required to submit data for NUGs and IPPs within its area. They should be required to submit their own data.

**Florida Reliability Coordinating Council**

The procedure does not address the process leading up to posting of a proposed data request. The process should parallel the standards development process, but would not need to be as detailed. The proposal should be reviewed by the appropriate technical committee. NERC should develop a comment form for use with a proposed data request that should include, at

## **EXHIBIT B**

least, a question as to whether the collection of the data will foster NERC's ability to meet its obligations and a question as to whether the organization currently collects the data and what the burden would be to start collecting that data. The procedure needs to include a mechanism for a revised proposed data request and a summary of the comments to be referred to the appropriate technical committee, which could then approve sending the proposal to the board of trustees, or remand the proposal to staff for further work. Staff could always take the revised proposal to the board, if imperative for NERC to meet its obligations, so long as it also included the recommendation of the technical committee.

### **Northeast Power Coordinating Council, Inc.**

The proposal should address the comparable legal basis for Canadian compliance with data requests. NERC should specify how long it intends to retain the data collected. It should be clear the data will be used only for the purpose for which it was collected. The proposal is silent as to the steps NERC would take if an entity fails to comply with an approved data request. NPCC has a Third-Party Non-Disclosure Agreement for requesting data from members participating on its CP-8 Working Group (Review of Resource and Transmission Adequacy). NERC would need to issue a separate data/information request for similar data.

### **Independent Electricity System Operator of Ontario**

Supports position taken by CEA on the authority issue. NERC and the regions should not routinely request critical energy infrastructure information. Where necessary, NERC and the regions should establish a program to identify, classify, and protect such data. The proposed rule is compatible with framework in Ontario, but IESO wants to be informed of the basis for the request, so it could determine whether to comply (e.g., whether it is to satisfy a FERC requirement). IESO will continue to supply the data core to NERC's effectiveness: standards, disturbance events, and reliability assessments.

### **Ontario Power Generation**

Supports CEA filing; supports need for a specific determination by an appropriate Ontario entity, of whether to provide requested data.

### **The Public Service Commission State of South Carolina**

The process outlined will work well for routine data collection, but not for emergency data requests necessitated by a major outage or some other transient. Rule should state it is not for emergency data needs.

### **SERC Reliability Corporation**

It is unclear what authority NERC would use to enforce compliance on an owner, operator or user that fails to comply with a data request. Because NERC can request data under various authorities, each data request should specify the authority under which it is to be collected. SERC seeks clarification as to whom an appeal or objection to a data request must be made. SERC asks whether regional procedures developed independently of the NERC procedure would have comparable enforceability to requests developed under the NERC procedure.

### **Siemens**

Define a cut-off on what size units need to report data. Reference IEEE standards people will be required to follow as they report data. Should define the reporting interval. Make clear NERC has the authority to collect the data.

**Southwest Transmission Dependent Utility Group**

Entities exempt from registration on the compliance registry should not be subject to the data collection requirements. STDUG questions how will NERC calculate the relative burden on entities to collect the data. NERC should have just one standard for the data, that specified in § 39.2. Any regional rules should establish an appropriate process. STDUG asks the meaning of “appropriate governmental authority.” Can someone forum shop? STDUG asks how the confidentiality provisions of Section 1500 of the Rules of Procedure relate to the proposed data request rule. STDUG urges that the data request rule be coordinated with NERC’s requirement to make changes to its confidentiality rules. STDUG asks for guidance on how NERC will maintain the confidentiality of data submitted voluntarily by entities that are not covered by Section 215. If NERC submits the voluntarily submitted information to FERC, how can such information be shielded from FOIA?

**Tennessee Valley Authority**

NERC should use a collaborative team of stakeholders to develop proposed data requests. NERC should ensure that similar data is not being collected through reliability standards or rules of procedure or state why that data is insufficient. Data request modifications should meet the same standards as original requests. Should allow industry comment on the final version submitted to the Board of Trustees for approval. Section 1606 is confusing.

**Wisconsin Electric Power Company**

NERC already has authority to collect data necessary to meet its obligations, so proposed rule is duplicative and unnecessary. Section 39.2(d) of FERC’s regulations gives it that authority. Section 804 of the Rules of Procedure also provides authority. NERC has been successful in getting data on a voluntary basis, so does not need the rule (see work of the Real-Time Tools Best Practices Task Force and GADS). If NERC does need additional mandatory data collection authority, then it should be adopted through the standards development process. If NERC adopts rule, then it needs to be modified as suggested by EEI. NERC should address the points in proposed Rule 1602.1.1.1 whenever it requests data, under any reliability standard or rule of procedure. NERC needs to clarify what compliance and enforcement measures exist for one who fails to comply with data request. NERC needs to add detail regarding the appeals procedure. NERC needs to specify procedures for dealing with confidential submissions, and how appeals will be handled regarding confidential determinations. Does Section 15 apply? Cyber security standards should apply to NERC’s collection of data and information. NERC should state that information NERC collects will not generally be made available to the public, as it did in Section 1500.

**REDLINE SHOWING CHANGES TO THE PROPOSED RULE ON REQUESTS FOR DATA OR INFORMATION FOLLOWING THE INDUSTRY COMMENT PERIOD****SECTION 1600 — REQUESTS FOR DATA OR INFORMATION****1601. Scope of a NERC or Regional Entity Request for Data or Information**

Within the United States, NERC and regional entities may request data or information that is necessary to ~~implement~~ meet their obligations under Section 215 of the Federal Power Act, as authorized by Section 39.2(d) of the Commission's regulations, 18 C.F.R. § 39.2(d). In other jurisdictions NERC and regional entities may request comparable data or information, using such authority as may exist pursuant to these rules and ~~in these as may be granted by applicable governmental authorities in those other jurisdictions.~~ The provisions of Section 1600 shall not apply to requirements contained in any Reliability Standard to provide data or information; the requirements in the Reliability Standards govern. The provisions of Section 1600 shall also not apply to data or information requested in connection with a compliance or enforcement action under Section 215 of the Federal power Act, Section 400 of these Rules of Procedure, or any procedures adopted pursuant to those authorities, in which case the Rules of Procedure applicable to the production of data or information for compliance and enforcement actions shall apply.

**1602. Procedure for Authorizing a NERC Request for Data or Information**

1. NERC shall post a proposed request for data or information or a proposed modification to a previously authorized request for data or information for a forty-five (45) day public comment period.
  - 1.1. A proposed request for data or information shall contain, at a minimum, the following information: (i) a description of the data or information to be requested, how the data or information will be used, and how the availability of the data or information ~~will foster~~ is necessary for NERC's ability to meet its obligations under applicable laws and agreements; (ii) a description of how the data or information will be collected and validated; (iii) a description of the entities (by functional class and jurisdiction) that will be required to provide the data or information ("reporting entities"); (iv) the schedule or due date for the data or information; (v) a description of any restrictions on disseminating the data or information (e.g., "confidential," "critical energy infrastructure information," "aggregating" or "identity masking"); and (vi) an estimate of the relative burden imposed on the reporting entities to accommodate the data or information request.
  - 1.2. A proposed modification to a previously authorized request for data or information shall explain (i) the nature of the modifications; ~~and~~ (ii) an estimate of the burden imposed on the reporting entities to accommodate the modified data or information request, and (iii) any other items from paragraph 1.1 that require updating as a result of the modifications.

## EXHIBIT C

2. After the close of the comment period, NERC shall make such revisions to the proposed request for data or information as are appropriate in light of the comments. NERC shall submit the proposed request for data or information, as revised, along with the comments received, NERC's evaluation of the comments and recommendations, to the Board of Trustees.
3. In acting on the proposed request for data or information, the Board of Trustees may authorize NERC to issue it, modify it, or remand it for further consideration.
4. NERC may make minor changes to an authorized request for data or information without board approval. However, if a reporting entity objects to NERC in writing to such changes within 21 days of issuance of the modified request, such changes shall require board approval before they are implemented.
5. Authorization of a request for data or information shall be final unless, within thirty (30) days of the decision by the Board of Trustees, an affected party appeals the authorization under this Section 1600 to ~~an~~ the appropriate applicable governmental authority.

### 1603. Owners, Operators, and Users to Comply

All Owners, operators, and users of the bulk power system registered on the NERC Compliance Registry shall comply with authorized requests for data and information.

### 1604. Requests by Regional Entity for Data or Information

A regional entity may request that NERC seek authorization for a request for data or information to be applicable within the footprint of the regional entity, either as a freestanding request or as part of a proposed NERC request for data or information. Any such request must be consistent with this Section 1600. The regional entity may also develop its own procedures for requesting data or information, but any such procedures must include at least the same procedural elements as are included in this Section 1600.

### 1605. ~~Non-Exclusivity~~ Confidentiality

~~Where an approved reliability standards requires owners, operators, or users to submit data or information, the provisions of that reliability standard are controlling. Where another provision in these Rules of Procedure requires the submission of data or information, that other provision is controlling.~~

If the approved data or information request includes a statement under Section 1602.1.1(v) that the requested data or information will be held confidential or treated as critical energy infrastructure information, then the applicable provisions of Section 1500 will apply without further action by a submitting entity. A submitting entity may designate any other data or information as confidential pursuant to the provisions of Section 1500, and NERC or the regional entity shall treat that data or information in accordance with Section 1500. NERC or a regional entity may utilize additional protective procedures for handling particular requests for data or information as may be necessary under the circumstances.