

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Compliance Application Notice (CAN) Process

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RELIABILITY | ACCOUNTABILITY



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Introduction

Compliance Applications Notices (CANs) were created by NERC to fulfill ERO obligations under FERC Order 693¹ to provide compliance guidance to Compliance Enforcement Authority (CEA)² staff and to provide transparency to industry in regard to compliance monitoring³ with NERC Reliability Standards. CANs encourage accountability for both CEAs and registered entities and were issued in response to requests for compliance guidance from industry stakeholders.

ERO Basis and Authority

NERC is the FERC-certified ERO and is accountable to the Commission and the industry for providing compliance guidance with regard to NERC Reliability Standards. The ERO's implementation of a thorough compliance program and appropriate enforcement actions, and providing continuing education and information campaigns to assist the industry sustain compliance, will enhance reliability of the Bulk Power System (BPS).

In FERC Order No. 693,⁴ several commenters argued that the NERC Reliability Standards were not comprehensive in nature and requested relief from monetary penalties and compliance with the NERC Reliability Standards. FERC responded, "As discussed in our standard-by-standard review, each Reliability Standard that we approve contains requirements that are sufficiently clear as to be enforceable and do not create due process concerns."⁵

Further, the Commission agreed with NERC that, even if some clarification of a particular NERC Reliability Standard would be desirable at the outset, making it mandatory allows the ERO and the Regional Entities to provide that clarification on a going-forward basis while still requiring compliance with NERC Reliability Standards.⁶

In addition, NERC and the industry are accountable for the development of NERC Reliability Standards, as articulated in the 2005 Federal Power Act⁷ and FERC Order No. 672,⁸ which duly recognizes the requisite collective expertise, experience and judgment of all parties involved to develop and improve standards.

¹ FERC Order 693, Docket No. RM06-16-000.

² Compliance Enforcement Authorities include ERO auditors, investigators, enforcement personnel or any person authorized to assess issues of concern, potential non-compliance, and possible, alleged or confirmed violations of NERC Reliability Standard requirements.

³ The Three-Year ERO Performance Assessment stated that NERC should "evaluate and implement ways to make registered entities more aware of means currently available to them to obtain guidance on how to comply with reliability standards and how to demonstrate compliance." Appendix A – Progress in Implementing Specific NERC Actions from the Three-Year ERO Performance Assessment – March 16, 2011, p. 19.

⁴ FERC Order No. 693, Docket No. RM06-16-000.

⁵ *Id.* at Paragraph 274.

⁶ "NERC can maximize consistency and appropriateness of treatment in compliance matters most efficiently if it has the ability to advise or provide direction...at an early stage..." FERC Order on NERC Three-Year Assessment, Docket Nos. RR09-7-000 and AD10-14-000, §216.

⁷ Section 215.d.2 located at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h6enr.txt.pdf.

⁸ See P. 324 located at http://www.nerc.com/files/final_rule_reliability_Order_672.pdf

Purpose

There are two significant and mutually reinforcing purposes of a CAN:

1. To establish consistency in the application of compliance criteria ~~across-among~~ all CEAs; and
2. To provide transparency to industry on how ~~a-CEAs will are to~~ apply compliance with a NERC Reliability Standard.

NERC received numerous industry comments requesting detailed compliance clarification of the NERC Reliability Standards. Below is a sampling of comments⁹ that NERC received during the comment periods of the NERC Three-Year Assessment¹⁰ and the Notice of Proposed Rulemaking (NOPR) of FERC Order No. 693. This feedback from industry factored significantly in the decision for NERC to implement CANs.

- NERC “need[s] to provide more information and guidance to registered entities concerning the compliance and enforcement process. This includes providing guidance on what it takes to comply with and demonstrate compliance with Reliability Standards, eliminating the backlog of audit reports and enforcement violations so that more precedents are available to industry, and providing more uniformity and consistency in audits between Regional Entities and different audit teams.”¹¹
- “A clear communication channel is fundamental to the success of the ERO. Connecting the feedback from different program areas, such as compliance monitoring and enforcement, reliability assessments and event analysis will prove valuable.”¹²
- “Without a designated communication process, the most efficient and effective compliance process is not in place between compliance staff and registered entities. Currently, each company and Regional Entity struggles with this problem on an inefficient, case-by-case basis. Hence, the [CAN] process NERC is recommending will increase efficiency and use less resources.”¹³
- “Some commenters argue that certain Reliability Standards require additional specificity or else users, owners and operators will not understand the consequences of a violation.”¹⁴

NERC appreciates interaction from Industry during comment periods, and channels of communication remain open at all times if questions or concerns regarding a particular CAN arise.

⁹ Commenters included industry trade associations that represent over 70 percent of utility customers in North America.

¹⁰ Comments submitted during the NERC Three-Year Assessment comment period.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ FERC Order No. 693, Docket No. RM06-16-000.

Scope

A CAN is not a formal interpretation ~~or of~~ a NERC Reliability Standard. Further, a CAN cannot modify or change an interpretation or NERC Reliability Standard. CANs instruct CEAs to assess compliance by using either a specific method, or, if there are multiple ways for a registered entity to meet the requirements of a standard, a range of acceptable compliance actions.

Concisely stated, a CAN is based on the following four principles:

- a. A CAN provides instructions to CEAs regarding the boundaries within which to assess compliance with effective standards and requirements
 - ~~i. A registered entity may demonstrate that it has an equally efficient and effective alternative to maintain compliance from a reliability objective~~
- b. A CAN cannot expand a standard
- c. A CAN cannot add new requirements
- d. A CAN applies to any facilities that affect the reliability of the BPS

The CAN process includes several crosschecks with other NERC programs and departments, including a review by NERC legal staff and the NERC Executive Approval Team.¹⁵ CANs provide timely compliance instruction to CEAs to ensure consistent application of the standards. In the event that CEA practices vary, the posted CAN establishes a benchmark that all CEAs must adopt. By making instructions to CEAs transparent to industry, CANs also include the benefit of informing registered entities what to expect during an audit.

CAN Process

The CAN process is designed to give CEAs instruction ~~or on~~ specific compliance applications in an expeditious manner. NERC follows several steps when developing CANs, including identifying issues that need clarification, prioritizing the issues, researching and developing CANs, providing the Regional Entities and industry time to comment, and submitting CANs to the Commission for review before posting them on the NERC Web site as final.

A. Issue Identification

NERC receives CAN topics through a variety of avenues, such as:

1. Industry comments received from individual registered entities, trade associations, and large corporations that have entities in multiple Regional Entities;

¹⁵ Chief Executive Officer, Senior Vice President and General Counsel, Senior Vice President and Chief Reliability Officer, Vice President and Director of Standards, Vice President and Director of Reliability Assessments, Vice President and Chief Security Officer, Associate General Counsel (693), Assistant General Counsel (CIP), Director of Compliance Operations, Director of Events Analysis and Investigations, Director of Training, Director of Situation Awareness and Director of Compliance Enforcement.

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2. Regional Entities and issues they observe;
 3. NERC in various oversight activities in CMEP and standards development; and
 4. Other regulatory bodies at the National-national or Provincial-provincial level.

NERC tracks the category source¹⁶ of the CAN request and will include it on the CAN Status spreadsheet posted on the NERC Compliance Application Notices web page.

CAN issues may relate to specific standards and requirements, crosscutting issues that cover various standards and requirements, or compliance monitoring processes and procedures. NERC encourages any interested party to submit an issue by sending a completed email Appendix 1 – CAN Template to cancomments@nerc.net and each issue will be reviewed.

B. ~~by NERC staff.~~

B. ~~Review Determination of whether a CAN is the Appropriate Vehicle~~

Once an issue is received by NERC receives an issue, the issue it is reviewed the issue for relevance as to determine whether a CAN will be drafted is the appropriate vehicle to resolve the issue it. In this relevance determination, NERC analyzes several factors are analyzed, including the number of entities that may be affected, the impact to reliability of the BPS, whether there are questions regarding compliance monitoring, if there are perceived inconsistencies in audit practices among Regional Entities, and if there is a need for clarity among industry stakeholders. NERC considers all requests for clarification, but in order for a CAN to be drafted, the issue must apply to multiple entities, multiple issues, or broad issues that apply to many industry members.

If NERC it is determined that a CAN is not the appropriate vehicle to resolve the issue, NERC will determine if there is another vehicle. For example, if the issue is a question regarding the mandatory and effective date of a revision to a standard, a bulletin/public notice may be a better vehicle.

D.C. ~~and Prioritization~~ Prioritizing of CANs

After NERC reviews the CAN issues are reviewed and it has been determined that a CAN should be drafted is the appropriate vehicle to address the issue, it the CAN is listed on the CAN potential issues Status spreadsheet, posted on the NERC Web site¹⁷ and is assigned a priority level.

There are several components that determine the priority of a CAN:

- Factors surrounding the issue
- Input from the Standards Committee (SC) and the Certification and Compliance Committee (CCC)

¹⁶ A category would not identify the name of source and would be a broad designation such as a Registered Entity type, Regional Entity, Trade Association, etc. but would not identify the name of source.

¹⁷ The complete list of CAN issues and prioritization can be found on the NERC web site: <http://www.nerc.com/files/CANs%20Status.pdf>.

- Input from Industry

~~NERC uses a prioritization tool to will determines the There are several CANs being drafted concurrently, and the determination of priority of the CANs is based on several factors surrounding the issue, which may include the significance of the issue,¹⁸ its impact to reliability of the BPS, its urgency, and the number of violations that have occurred due to the issue, the standard and requirement, and the number of registered entities that are affected, or the level of confusion on the issue.~~

~~NERC will solicit input from the Standards Committee SC and the Certification and Compliance Committees CCC regarding prioritization and any initial input on the issue.~~

~~Industry may also provide input as to the prioritization of a CAN and any initial comments on the issue by submitting a completed Appendix 2 – Industry Prioritization Recommendation Form to the NERC’s comments@nerc.net. The posting on the CAN Status spreadsheet will strive to provide sufficient information for so that interested parties to be able to can submit a prioritization request or initial comments on the issue. A priority level of a CAN may be changed based upon need. CANs are developed in the order that will help the most registered entities at the moment.~~

~~When an CAN is prioritized, there are three buckets groups in which the issue can be placed. They are groups. The priority level of a CAN may change based upon 1) a change to the factors surrounding the issue, 2) the identification of a higher priority CAN to be developed, or 3) input from either the SC, CCC, or industry. Issues that impact the BPS are the highest of priority levels, and there are moderate issues and lower level administrative issues. CANs with the highest priority will be drafted first, followed by moderate issues, then lower level administrative issues. Interested parties may submit requests to change the assigned priorities of specific CANs in the queue.~~

E.D. Development Process

After an issue ~~is has been~~ identified and a priority ~~is~~ assigned, ~~NERC staff~~NERC begins the CAN development process. ~~Before any drafting is done, the CAN team~~NERC conducts investigation reviews ~~of the issue.~~ The first step is a review of the NERC Reliability Standard in its entirety, including applicable FERC orders, approved standards interpretations, the standards drafting team’s intent, ~~investigating~~ investigation of how CEAs are currently applying compliance, and ~~any~~ other existing communications and guidance. ~~The CAN team~~NERC also reviews the inputs that ~~were~~was received during the prioritization process.

¹⁸ ~~One determination of significance of the issue is whether the issue is related to one of the NERC identified High risk factors for the reliability of the BPS: (1) Misoperations of relay protection and control systems; (2) Human errors by field personnel; (3) Ambiguous or incomplete voice communications; (4) Right-of-way maintenance; (5) Changing resource mix; (6) Integration of new technologies; (7) Preparedness for high-impact, low frequency events; and (8) Non-traditional threats via cyber-security vulnerabilities.~~

~~Then, NERC then research process also conducts research that, which includes obtaining receiving technical information from subject matter specialists, standards drafting teams, CEAs and Regional Entities. The input from subject matter specialists may include soliciting input from industry stakeholder committees or individuals their subcommittees, as appropriate. NERC This research is conducted conducts this research to determine the level of consistency that exists in regards to the issue.~~

When NERC has concluded the research ~~is concluded~~ and a draft CAN is complete, ~~they present it~~ CAN is presented to the NERC Executive Approval Team, ~~who discusses the issues, checks for accuracy, and approves the draft to move to the Regional Entities comment period, then the industry comment period for the first level of approval.~~

F.E. Regional Entity Comment Period

Following NERC Executive Approval Team approval, the NERC sends the CAN ~~is sent~~ to the Regional Entities for verification of the compliance application. The Regional Entities, as a part of the ERO, have been ~~are~~ involved throughout the development process. At this point, NERC gives ~~the~~ Regional Entities are provided an initial review period time of three to ~~of~~ five days to conduct a review of the drafted document prior to posting. This provides the Regional Entities an opportunity to ~~identify any issues or concerns that occurred in the editing of the draft~~ that would prevent the CAN from moving forward in the process. In the event that a Regional Entity discovers content in the CAN that is technically incorrect or any other issue that should prevent the CAN from moving forward, the Regional Entity will notify NERC.

In the event that the Regional Entities support progression of the CAN, it will be posted on the NERC Web site for industry comment. The Regional Entities may provide additional ~~comments~~ period will ~~continue~~ throughout the industry comment period. In addition to the Regional Entities' initial review prior to posting the CAN, the Regional Entity has had opportunity to comment throughout the entire CAN development process.

G.F. Industry Comment Period

The industry period lasts 21 days, and extensions of time may be granted upon request. Registered entities or their representatives may submit their comments via Appendix 3 - the CAN Comment Form.¹⁹ In order to keep the CAN process transparent, NERC will ~~will~~ posts all industry comments on the NERC Web site as they are received.

After the comment period, NERC staff analyzes all comments received and reviews the CAN for potential changes based on the comments. In order to keep the CAN process transparent, NERC will ~~post all industry comments on the NERC Web site as they are received. Registered entities or their representatives may submit their comments via the CAN Comment Form.~~²⁰ NERC staff will review

¹⁹ See Appendix 3 for the CAN Comment Form.

²⁰ See Appendix 3 for the CAN Comment Form.

~~each comment and make changes to the CAN as appropriate. NERC will provide rationale for any changes made or not made to the CAN and will post the rationale on the NERC Web site.~~

Industry comments are especially important when the compliance application varies, as the CAN will establish a consistent application. Industry, in this context, includes registered entities, their trade associations or forums, and NERC stakeholder committees, as appropriate.

H.G. Final Review and Posting

~~NERC presents~~ ~~the~~ final draft of the CAN ~~is presented~~ to the ~~CAN-NEERC~~ Executive Approval Team for a ~~second~~ review of the CAN, including any modifications that were made, or were not made, after industry comments. ~~Upon approval by the CAN-NEERC Executive Approval Team, the NERC sends the~~ CAN ~~is sent~~ to FERC staff and Canadian Regulators²¹ for review, after which ~~NERC posts~~ it ~~is posted~~ as final on the NERC web site.

~~Once~~ ~~When NERC posts~~ the CAN ~~is posted~~, an email announcement ~~goes out~~ ~~is sent~~ to all registered entities and CEAs.

H.H. Webinars and Training

NERC conducts webinars after CANs are posted as final on the NERC Web site to provide ~~an~~ ~~opportunities~~ ~~opportunity~~ for questions from industry and CEAs. The webinar slides ~~and the Q&A from the webinars~~ are posted on the NERC Web site.

NERC also provides training for CEAs and industry to develop awareness of the CANs and consistency in the use of the compliance application. ~~NERC presents~~ ~~Recently posted~~ CANs and the CAN process ~~are presented~~ at trade forums, compliance workshops and committee meetings.

H.I. Expiration or Removal of CANs

CANs are retired when a revised standard or interpretation that addresses the compliance application issue in the CAN is approved by FERC and ~~is becomes~~ enforceable. Further, a CAN may be revoked or revised if ~~a higher level of review directs the CAN to be withdrawn or modified, or~~ additional information is brought forward to demonstrate that the CAN is incorrect.

²¹ ~~As requested by each Province.~~

Benefits of CANs

The advantages of issuing a CAN are significant. CEAs receive instruction so compliance monitoring of the NERC Reliability Standards is conducted consistently. The result of the transparent process provides registered entities with visibility into how compliance will be applied. Additionally, CANs are generated in a relatively short time period compared to a much lengthier formal process.

A. Provide Formal Feedback to Standards

For each CAN that ~~is drafted~~ NERC drafts, NERC staff submits the issues ~~raised during the development process~~ to ~~the applicable~~ Standards Development Teams and the standards issue database, to be considered in ongoing or future standards projects, revisions to existing standards, or the initiation of new standards. All of the decisions concerning standards development rest with the stakeholders through the actions of the Standards Committee.

B. Time to Develop

The timeline for CAN development from issue identification to final posting ~~takes approximately three~~ is measured in terms of months ~~typically 3–6~~ three to six months. This process is designed to be much more responsive than either the formal Standards Interpretation Process or the Standards Development Process,²² which may take 18 - 36 months, plus FERC approval time.

CAN Issues and Concerns

During the development of the CAN process, NERC received issues and concerns from industry stakeholders. This section ~~will~~ highlights some concerns and ~~provide~~s answers to the questions received.

- *NERC received comments that CANs ~~are overreaching~~ the standards.* CANs give the necessary instruction to CEAs in order to monitor compliance to the standards in a consistent manner. CANs are temporary in nature and will be retired when a standard or interpretation that addresses the issues therein becomes effective.
- *NERC received comments that the CAN process ~~is circumventing~~ the standards process.* The CAN process and the standards process serve different purposes. The Standards Development Process, ~~codified by~~ is a codified the Federal Power Act of 2005, Section 215,²³ ~~process that~~ creates mandatory and enforceable laws regulation. The CAN process provides instruction on how CEAs are to assess compliance with ~~those laws~~ that regulation. Therefore, NERC must balance the long-term standards development process with the day-to-day compliance monitoring and enforcement responsibilities as the FERC-certified ERO.

²² See the NERC Rules of Procedure, Appendix 3A, Standards Process Manual, Effective September 3, 2010.

²³ Define codified

Contesting a CAN

NERC's belief is that transparent, open communication of compliance applications provides an opportunity to formally address areas of concern. When industry takes issue with ~~an~~the application identified in a CAN, there are several existing processes available for formal resolution. In accordance with the NERC Rules of Procedure, a registered entity may contest a violation that was assessed due to the application of a CAN.

A registered entity or its representatives (requestor) may (in order of hierarchy):

1. Submit technical evidence in support of a request to NERC to have a CAN changed or removed.
 - a. ~~If NERC will acknowledge receipt of the issue within two business days and will keep the requestor informed of progress. Following NERC's determination, does not respond to the request within a reasonable time as determined by the requestor, or if the registered entity requestor is not satisfied with the change to the CAN based on NERC's review of the technical evidence provided,~~ then the registered entity requestor may:
2. Propose a change to the standard through a request for a formal interpretation²⁴ or a Standard Authorization Request (SAR); or
3. Request a higher-level review of the CAN²⁵
 - a. The first level of review would be conducted by NERC's Chief Executive Officer.
 - a.b. If a registered entity is not satisfied with the results of the first level of review, the registered entity may request a second level of review by the NERC Board of Trustees Compliance Committee (BOTCC).

The higher-level review of the CAN may result in three options for disposition: (1) affirm the CAN as written, (2) make recommended changes to CAN, or (3) withdraw the CAN. If ~~at~~the CAN is modified or withdrawn, there will be an announcement to industry and to ERO Compliance Enforcement Authorities to ~~clarify~~announce the change.

The higher-level review will begin when the registered entity or its representative submits the CAN Higher-Level Review Form (Appendix 5) to NERC. ~~NERC will have 21 days to respond to the registered entity or its representative as to whether the request will be heard. The next step will be a review by NERC's Chief Executive Officer or his designee, who will have 1428 days to review the CAN and determine~~decide whether ~~the~~ CAN it will be affirmed, ~~changed~~ modified or withdrawn.

If a registered entity or its representative decides to ~~continue~~pursue the higher level of review to the Board of Trustees Compliance Committee (BOTCC), they must submit a second request for ~~H~~higher-level ~~R~~review by completing additional information and ~~re~~-submitting a revised Appendix 5. The

²⁴ A formal interpretation is conducted through the Standards Development Process. As such, it is formally filed with FERC and will result in an order issued by FERC Commissioners.

²⁵ See Appendix 5 for the CAN Higher-level Review Form.

~~BOTCC will review the comments and the applicable CAN at the next available time during its monthly closed-closed-BOTCC and meeting and make a decision termination whether to either uphold the CAN NERC Chief Executive Officer's decision, or to overturn the decision. If the BOTCC decides to will review the decision complete record, it will do so on a de novo basis, and determine whether its decision will be to either uphold the CAN, direct the CAN to be changed modified or to withdraw the CAN.~~

~~At any time through the higher level review process an entity or its representative may withdraw its request for review.~~

Summary

Compliance Application Notices fulfill NERC's obligation as the ERO to provide a consistent compliance monitoring program under FERC Order No. 693. CANs carry out the requests of industry for clarification and provide timely compliance guidance in a transparent manner. CANs not only assist CEAs in monitoring compliance, but the industry benefits from understanding what the issues are and how to prepare for an upcoming audit. The CAN process is evolving, and changes have been made to the program based on feedback from industry stakeholders, Regional Entities, and the NERC Board of Trustees.

Version History

Version	Date	Action
0	May 2010	Initial Draft
1	December 10, 2010	Updated CAN Process
2	April 14, 2011	Updated CAN Process with detailed steps
3	July 8, 2011	Updated CAN Process to include specific industry requests
4	August 15, 2011	Updated Purpose Section, Contesting a CAN Section, based on Board of Trustee recommendations.
<u>5</u>	<u>October 14, 2011</u>	<u>Updated CAN Prioritization Process, Regional Entity comment section, industry comment section, CAN higher-level review section, and added Appendices 1-5.</u>