

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 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 recognize 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 among all CEAs; and
2. To provide transparency to industry on how CEAs 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 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
- 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 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;
2. Regional Entities and issues they observe;

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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3. NERC in various oversight activities in CMEP and standards development; and
 4. Other regulatory bodies at the national or provincial level.

NERC tracks the category source¹⁶ of the CAN request and includes 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 Appendix 1 – CAN Template to cancomments@nerc.net.

B. Determination of Whether a CAN is the Appropriate Vehicle

Once NERC receives an issue, it reviews the issue to determine whether a CAN is the appropriate vehicle to resolve it. In this relevance determination, NERC analyzes several factors, 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 determines 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.

C. Prioritization of CANS

After NERC reviews the CAN issues has determined that a CAN is the appropriate vehicle to address the issue, the CAN is listed on the CAN Status spreadsheet, posted on the NERC Web site¹⁷ and 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)
- Input from industry

NERC determines the priority of the CAN based on factors surrounding the issue, which may include the significance of the issue,¹⁸ its impact to reliability of the BPS, its urgency, the number of violations

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

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>.

that have occurred due to the issue, the standard and requirement, and the number of registered entities that are affected.

NERC will solicit input from the SC and the 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 NERC’s cancomments@nerc.net. The posting on the CAN Status spreadsheet will provide information so that interested parties can submit a prioritization request or initial comments on the issue.

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.

D. Development Process

After an issue has been identified and a priority assigned, NERC begins the CAN development process. Before any drafting is done, NERC reviews 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, investigation of how CEAs are currently applying compliance, and any other existing communications and guidance. NERC also reviews the input that was received during the prioritization process.

NERC then conducts research that includes obtaining technical information from subject matter specialists, standards drafting teams, CEAs and Regional Entities. The input from subject matter specialists may include soliciting input from stakeholder committees or their subcommittees, as appropriate. NERC conducts this research to determine the level of consistency that exists in regard to the issue.

When NERC has concluded the research and a draft CAN is complete, they present it to the NERC Executive Approval Team for the first level of approval.

E. Regional Entity Comment Period

Following NERC Executive Approval Team approval, the NERC sends the CAN to the Regional Entities for verification of the compliance application. The Regional Entities, as a part of the ERO, are involved throughout the development process. At this point, NERC gives the Regional Entities a period 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

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.

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 throughout the industry comment period.

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 comments via Appendix 3 - the CAN Comment Form.¹⁹ In order to keep the CAN process transparent, NERC posts all industry comments on the NERC Web site.

After the comment period, NERC staff analyzes all comments received and reviews the CAN for potential changes based on the comments. NERC provides rationale for any changes made or not made to the CAN and posts 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.

G. Final Review and Posting

NERC presents the final draft of the CAN to the NERC 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 NERC Executive Approval Team, NERC sends the CAN to FERC staff and Canadian Regulators²⁰ for review, after which NERC posts it as final on the NERC web site.

When NERC posts the CAN, an email announcement goes out to all registered entities and CEAs.

H. Webinars and Training

NERC conducts webinars after CANs are posted as final on the NERC Web site to provide an opportunity for questions from industry and CEAs. The webinar slides 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 at trade forums, compliance workshops and committee meetings.

¹⁹ See Appendix 3 for the CAN Comment Form.

²⁰ As requested by each Province.

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 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.

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 NERC drafts, NERC submits the issues raised to 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 is measured in terms of months—typically 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,²¹ 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 highlights some concerns and provides answers to the questions received.

- *NERC received comments that CANs overreach 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 circumvents the standards process.* The CAN process and the standards process serve different purposes. The Standards Development Process, codified by the Federal Power Act of 2005, Section 215, creates mandatory and enforceable regulation. The CAN process provides instruction on how CEAs are to assess compliance with that

²¹ See the NERC Rules of Procedure, Appendix 3A, Standards Process Manual, Effective September 3, 2010.

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.

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 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. NERC will acknowledge receipt of the issue and will keep the requestor informed of progress. Following NERC's determination, if the requestor is not satisfied with the change to the CAN, then the requestor may:
2. Propose a change to the standard through a request for a formal interpretation²² or a Standard Authorization Request (SAR); or
3. Request a higher-level review of the CAN²³
 - a. The first level of review would be conducted by NERC's Chief Executive Officer.
 - 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 the CAN is modified or withdrawn, there will be an announcement to industry and to ERO Compliance Enforcement Authorities to 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's Chief Executive Officer or his designee will have 14 days to review the CAN and determine whether it will be affirmed, modified or withdrawn.

If a registered entity or its representative decides to pursue the higher level of review to the Board of Trustees Compliance Committee (BOTCC), they must submit a second request for higher-level review by completing additional information and submitting a revised Appendix 5. The BOTCC will review the comments and the applicable CAN at the next available time during its monthly BOTCC meeting and

²² 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.

²³ See Appendix 5 for the CAN Higher-level Review Form.

make a determination whether to uphold the CAN. The BOTCC will review the complete record and determine whether to either uphold the CAN, direct the CAN to be modified or withdraw the CAN.

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.
5	October 14, 2011	Updated CAN Prioritization Process, Regional Entity comment section, industry comment section, CAN higher-level review section, and added Appendices 1-5.