

CAN-0030 Comment Analysis Summary

Attestations

CAN-0030 provides instruction for assessing the appropriate uses of attestations as evidence of compliance with a reliability standard. The CAN was posted for industry comment on the NERC web site on October 19, 2011 and the comment period expired on November 9, 2011. NERC received 17 comments from registered entities and 3 comments from trade associations, which are identified below. The main themes of the comments consisted of the following four categories: errata changes, scope, effective date and evidence of compliance. In addition, there were a few comments that expressed appreciation for the removal of the notary requirement from previous version of the CAN.

Errata

The recommended errata change was implemented in order to clarify the issue statement by adding the word “requirement” to the end of the sentence.

Scope

There were several recommended substantive changes to the CAN in regard to scope.

A commenter stated that the first sentence of the Compliance Application section was inconsistent with the remainder of the CAN. The sentence states, “A CEA [compliance enforcement authority] is not to accept an attestation as a substitute for the registered entity’s obligation to have maintained adequate records.” The commenter believed that the first sentence contradicted the following instructions of the CAN, because there may be other instances beyond the three examples where the CEA may use discretion to allow an attestation.

In response to the comment, there is an obligation for registered entities to maintain records of compliance and have the evidence available during an audit; an attestation is not to be an acceptable alternative to providing evidence. However there are times when an attestation is appropriate, and this CAN provides guidance to CEAs for three acceptable situations where an attestation is a sufficient form of evidence plus allows discretion in other circumstances not outlined in the CAN. The language in the CAN states “If no corroborating evidence is available, CEAs are not precluded from accepting an attestation but must evaluate the facts and circumstances to determine whether the attestation by itself constitutes sufficient evidence.”

Another comment was made in reference to the second example in the Compliance Application section, which instructs CEAs to verify other corroborating evidence if the registered entity attests that an event did not occur. The commenter went on to state that corroborating attestations with supporting evidence for an event or situation did not occur will create unnecessary administrative burdens for both Registered Entities and Regional Entities.

In response to the comment, it is the CEA's duty to assess the evidence and to determine if the attestation provides reasonable assurance of the entity's compliance. In the event that no corroborating evidence is unavailable, a CEA must evaluate the facts and circumstances to determine whether the attestation alone constitutes sufficient evidence.

Another comment was submitted about the third example in the Compliance Application section that references NERC Compliance Process Bulletin #2011-001, Data Retention. The commenter stated that record retention is not directly related to the purpose of the CAN. Since the data retention subject is already addressed in referenced in a NERC Bulletin, it shouldn't be necessary to duplicate the requirements in this CAN. It was suggested that this item be deleted.

In response, the Data Retention Bulletin was included to provide CEAs with another reference with regard to attestations during their compliance monitoring of registered entities. The reference of attestations in the Public Notice Bulletin also states that CEAs are to verify the attested statements and any applicable corroborating evidence, which is consistent with the instruction in CAN-0030.

Effective Date

Several commenters believe that NERC should to incorporate a reasonable implementation period for all CANs. Other commenters suggested that a CAN should become effective only after it is publicly posted by NERC as final and provides in that posting an implementation and effective date which cannot be earlier than the posted date. There has been confusion from the industry about the date stated in the Effective Period of CAN section, as it refers to the date of the previously posted version.

The effective date for CAN-0030 is date that the CAN is posted as final on the NERC web site, which is the date CEAs are to begin using the compliance application to assess compliance.

Evidence

Commenters had questions regarding the Evidence of Compliance section. Particularly, several industry members stated that NERC should only verify attestations and should not look for additional corroborating evidence. The commenters stated that CEAs should only conduct an investigation when other evidence supports a reasonable suspicion of a possible compliance violation.

To clarify CAN-0030, attestations will be considered as evidence when a registered entity wishes to provide such evidence of compliance. However, to obtain reasonable assurance of compliance, CEAs are to verify if there are any other types of corroborating evidence to substantiate the attestation. The types of evidence that may be reviewed are documents, log books and interviews with registered entity staff. The determination of whether the attestation is sufficient on its own will be dependent on the specific facts and circumstances of the situation. Attestations are a tool to assist CEAs and registered entities during an audit, but they should not be used as an alternative to maintaining adequate records.

Conclusion

The analysis spreadsheet for CAN-0030 is posted on the NERC website. Because the spreadsheet format may not provide sufficient visibility into the effort that NERC puts into reviewing all of the comments received with respect to this CAN, this document is intended to supplement that information. NERC staff thanks industry for the time and effort put into providing that feedback. If you would like further discussion on CAN-0030, please feel free to contact us at cancomments@nerc.net.

Registered Entities that submitted CAN Comments

ACES Power Marketing
American Electric Power (AEP)
American Transmission Company (ATC)
Associated Electric Cooperative, Basin Electric Power Cooperative and Tri-State Generation and Transmission Association (G&T Cooperatives)
Bonneville Power Administration (BPA)
Central Lincoln
Constellation Energy (CEG)
Farmington Electric Utility System (FEUS)
First Energy (FE)
Ingleside Cogeneration/Occidental
Kansas City Power & Light (KCP&L)
Manitoba Hydro
Oncor Electric Delivery Company
PSEG Services Corporation
Puget Sound Energy (PSE)
Southern Company
Westar Energy

Trade Associations that submitted CAN Comments

Edison Electric Institute (EEI)
Midwest Reliability Organization NERC Standards Review Forum (MRO NSRF)
National Rural Electric Cooperative Association (NRECA)