

To: ROPcomments@nerc.net
From: NERC Compliance and Certification Committee
Re: Recently Proposed Changes to Rules of Procedure
Date: 12/22/11

At its December meeting, the Compliance and Certification Committee (CCC) discussed various changes NERC has recently proposed to the Rules of Procedure (ROP) as well as the manner in which NERC presents ROP changes to stakeholders for input.¹ Herein, the CCC respectfully submits the following comments.

A. The CCC reiterates its opposition to NERC’s proposal to increase the number of members required to present ROP changes for consideration to the Board of Trustees.

The current discrepancy between the Bylaws (requiring 50 Members/3 Sectors to propose a change to the ROP for Board of Trustees (BOT) consideration) and ROP1401 (requiring 10 Members/3 Sectors) needs, of course, to be fixed. However, because both are filed documents at FERC, the CCC respectfully supplements its October request that NERC amend the Bylaws to make them consistent with the current version of ROP 1401.

As NERC has gained increased maturity in operating as the ERO, NERC, as well as its Members, are gaining increasing experience with the Rules of Procedure – learning what works well, what might benefit from improvement, and what other types of Rules might be needed to support the ERO mission. NERC should support rules and practices that facilitate its Members providing feedback to the BOT on how the Rules of Procedure might be improved.

B. The Rules of Procedure concerning “Certified Questions” (*see, e.g., 412*) are not ready for filing as they require greater explanation regarding potential interplay with other Rules of Procedure.

NERC has proposed to include a new process that allows a Regional Entity Hearing Body conducting a hearing concerning a disputed matter to certify a significant question of policy, interpretation or application of one or more reliability standard requirements to the NERC Board of Trustees for decision. This ROP is not ready for filing as: (1) it could pose significant delays in the resolution of matters under hearing, and (2) the ROP does not account for how other Registered Entities may be impacted by resolutions of these questions.

¹ In this regard, the CCC’s comments build on comments submitted to the Board of Trustees by EEI, EPSA, the ISO/RTO Council, NRECA regarding the need for more proactively outreach by NERC on its proposed changes to the Rules of Procedure. See http://www.nerc.com/docs/bot/agenda_items/Policy%20Input-Complete-November%202011.pdf

1. The ROP may introduce unwarranted delay in a hearing

Proposed Section 412 essentially introduces an interlocutory process for the resolution of issues up for hearing. The interlocutory process can be initiated by either the hearing body or the BOTCC. The schedule of this process, including the timing for submission of memoranda and reply memoranda, will be established on an *ad hoc* basis at the discretion of the BOTCC. As such, this section introduces the likelihood of delay in resolving issues through the hearing process and fails to provide a clearly defined process whereby entities subject to hearing will be assured of timely resolution and/or an opportunity to be heard.

2. The ROP does not provide an opportunity for similarly situated Regional Entities/Registered Entities to Present Their Views to the BOTCC

“Significant questions of policy, law or interpretation” appear to, by definition, impact other Regional Entities and other Registered Entities. While the ROP anticipates that the BOTCC may seek the opinion of certain NERC Departments, the ROP affords no opportunities for other Regional Entities or Registered Entities to present their views to the BOTCC.

This is particularly important if NERC anticipates that a “significant question” could involve one of Standard interpretation. Not only are Registered Entities and other Regional Entities impacted by how a Standard is interpreted, these other Entities may be better situated to provide the BOTCC with perspective on how to resolve such a Standard Interpretation question than the Registered and Regional Entities subject to the Hearing. Moreover, establishing such a process may undermine the existing Standing Committees and existing NERC processes for seeking interpretations of Standards – processes which go through rigorous stakeholder review.

These existing processes, in essence, serve to ensure that NERC BOT has the benefit of all stakeholder input prior to being asked to make final decisions about Standards.

C. Modifications to Section 500 and Appendix 5 need additional work to clarify terms and process steps.

- **Section 501 1.3.1** – For clarity and to eliminate a possible compliance enforcement gap, the CCC suggests the following wording for the last sentence: “The organization entity is responsible for compliance with all the reliability standards applicable to the functions for which it is registered from the effective date of the registration confirmed in the registration notification from NERC.” In addition, NERC should consider adding language to this section regarding the forced registration of an organization if the Regional Entity and an organization cannot agree on registration or the effective date of said registration.

- **In the first paragraph of Appendix 5A, the acronym BPS was introduced and is used throughout Appendix 5A.** However the use of BPS is done as a substitute for an undefined term “bulk power system” whereas uses of other acronyms for example RC for Reliability Coordinator are a substitute for defined terms. Suggest not making the BPS substitution and continued using “bulk power system” throughout.
- **The change from Entity(ies) to Entit(ies) causes confusion because the term is used to describe either a single Entity or multiple Entities.** Believe that the existing version is more correct in the context of Appendix 5A. Page 2 of 20 2(b) should be Entities not Entit(ies)
- **Registration (Page 2 of 20)** – Appears proposed changes removed the Regional Entity from the NERC Compliance Registry (NCR) obligation and states that NERC is responsible for the NCR. This change needs to be made throughout the RoP for such references (Example: in Appendix 5B – Compliance Registry Criteria section V bottom of Page 9)
- **Page 3 of 20** suggest adding a #4 to the Regional Entity Certification section that requires that the Regional Entity approve or disapprove the certification as included on Page 11 of 20 #19.
- **For consistency,** need to decide whether NERC is first or the Regional Entity in a listing that includes both.
- **Section 8b (Page 9 of 20)** appears that there is a missing step. How does an entity know who is the team lead?

D. Modifications to Section 800/Appendix 8 (Event Analysis) need additional work to better define process steps and to create a clearer demarcation between event analysis and compliance enforcement.

Provisions in Section 800 appear to direct NERC to conduct a compliance investigation for Major Events. While NERC should consider vetting these provisions further with the Operating Committee, to the extent NERC goes forward, it should make explicit the reasons why certain Major Events require compliance investigations.

1. Section 800 and Appendix 8 contain unnecessary language.

ROP Section 800/Appendix 8 need not restate that Registered Entities are obligated to follow EOP-004. The Rules of Procedure should specify ERO and NERC Member obligations and the procedure steps that each are expected to follow. Much of Appendix 8 is, however, written in a “Guidance” Document fashion.

For example, Appendix 8 states that “[w]hen a BPS event occurs, the entities involved must first recognize it, then respond to it, and ultimately stabilize the system. Once the system has been stabilized, event analysis can begin.” In another part, the Appendix states that: “If a weather-related occurrence falls within any of the categories it should be reported. The affected registered entities should focus on restoration efforts. After restoration is complete, the affected entities, in coordination with Regional Entities, will determine if any additional information or event analysis steps are needed.”²

As such, NERC may want to consider migrating much of this language to a “Manual”, because this would give NERC and its Members more flexibility to modify and amend the Document, and would not require FERC approval. The Rules of Procedure should be focused on specifying ERO and NERC Member obligations and the procedure steps that each are expected to follow.

In addition, Appendix 8 asserts authority for NERC that it does not have. For example, in “Phase 2” of Response to Major Events, NERC states that it “will coordinate requests by government agencies for information from Reliability Coordinators and Transmission Operators, and serve as a conduit and coordinator between industry and government for regular status reports on the restoration.” NERC cannot usurp the obligations and needs that these entities have to communicate directly with governmental entities, however those entities may see fit.

2. The Major Event Analysis Objectives, Analysis, Approach, Schedule and Status Section Blurs the Event Analysis and Compliance Investigation

In some instances, the Major Event Analysis calls for inquiries that appear to be compliance investigations. As such, NERC should consider rewriting Appendix 8 to remove such provisions to add clarity what type of work constitutes “Event Analysis” and what type of work constitutes “Compliance Investigation.”

For example, in Question 24 of the Major Event template asks: “What were the qualifications (including certification status) and training of all operating personnel involved in the major event and their supervisors”? This question has a direct bearing on the Registered Entity’s compliance with PER Standards – yet there is no stated reason why non-compliance with PER Standards would be a root cause to a Major Event. An Event Analysis inquiry might focus on the *quality or frequency* of a Registered Entity’s training program but not necessarily on the certification status of the operating personnel.

E. The new definition for “Confirmed Violation” should be clarified.

² To the extent that NERC believes that it must issue such guidance in its ROP, the Appendix could state that “For weather-related occurrences, Registered Entities should contact NERC/Regional Entity after they have taken necessary operating and maintenance action to discuss whether any event analysis work is appropriate.”

The new definition of “Confirmed Violation” states that it is an alleged violation for which... (4) the registered entity has entered into a settlement agreement, regardless of whether or not the registered entity has admitted or contested the alleged violation.” The CCC respectfully submits that the following words be added to the end of the sentence: “that is the subject of the settlement agreement”.

F. Finally, the CCC respectfully requests that NERC work with the CCC to better define how it will publish and promote future changes to the ROP.

While the CCC appreciates NERC’s recent efforts to better explain the basis and substance of proposed sets of changes, as discussed further below, small additional efforts to facilitate Membership input in this area can yield great improvements in prioritizing changes and improving final work product. In short, even though NERC has published memorandum accompanying proposed changes, these memorandum can be lengthy, lack purpose/scope justification, and cannot alone substitute for more proactive Membership outreach.

1. **NERC should publish a regulatory schedule with quarterly updates.** Because NERC files many ROP changes based on its own finding of need/schedule, NERC could describe for its Membership, *in advance*, a summary of scope and purpose of anticipated ROP filings. This would allow for early Membership feedback and avoid protracted disputes *after* NERC has already invested substantial resources in drafting ROP changes.
2. **Before publishing for comment, NERC should seek CCC (or other appropriate Committee) input to flag any potential significant issues.** While the CCC believes that it would be the most likely Stakeholder Committee to review such changes, other Standing Committees (e.g., Standards Committee on ROP 300 changes) would also have useful input. The type of Membership review could be discussed when NERC posts its regulatory schedule.
3. **NERC should add webinar/committee presentations contemporaneous with posting of summary memo.** This would greatly facilitate understanding of the issues beyond reading, complex, voluminous postings. Nothing substitutes for allowing for “back and forth” discussion on the nature and purpose of proposed changes in programs and policies.
4. **NERC should consider extending comment period on proposed ROP changes.** This is appropriate, because: (a) NERC typically sets schedule/need for changes; and (b) unlike Standards changes, there typically has not been a lot of Membership input in the original development of the change. Therefore, Members require more time to review and provide constructive comment.
5. **NERC should improve prioritization of work effort.** With numerous comment due dates for CANs, VRF/VSLs, Standards, organizing posting of all of these

changes can lessen regulatory burdens and thereby improve quality of postings and quality of comments.