

**COMMENTS OF KANSAS CITY POWER & LIGHT COMPANY ON  
PROPOSED CHANGES TO NERC RULES OF PROCEDURE AND ASSOCIATED  
APPENDICES**

Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, both subsidiaries of Great Plains Energy Incorporated (collectively, “KCP&L” or the “Company”), respectfully submit these comments in response to the Proposed Changes to the NERC Rules of Procedure and associated appendices (“RoP”) issued November 7, 2011 by the North American Electric Reliability Company (“NERC”) in the above-captioned. Comments are provided on sections in sequential order and subsequently address comments with the overall process. NERC’s consideration of these comments is appreciated. KCP&L also supports the comments submitted by the Edison Electric Institute (“EEI”), the NERC Compliance and Certification Committee (“NERC CCC”) and remains actively engaged in collaboratively working with industry.

Overall, both EEI and the NERC CCC submitted commentary on the transparency and communications related to RoP changes. The NERC CCC made specific suggestions for improvements to communications between NERC and the industry participants for these changes. KCP&L strongly supports that these types of improvements promote efficiency in response and participation in a coordinated way to strengthen the compliance program as well as continue to encourage industry participants to “lean in” to achieve compliance excellence in reliability and security of the Bulk Electric System. This is ultimately the goal for all achieved through compliance culture, programs and partnerships for lessons learned as well as information sharing.

**Comments on proposed changes to the Rules of Procedure:**

In previous submissions by industry on RoP changes, NERC specifically addressed several of the comments or concerns expressed. We appreciate their efforts in this clarification and endeavor to address concerns of industry participants. In some circumstances, the comment submissions have not been clarified or addressed. KCP&L would like to reiterate the concerns previously submitted to request consideration or additional clarity.

**Section 401.11.3** KCP&L submits that use of the terms “**other mitigation activities**” adds ambiguity and requires further definition. We recommend that the term be defined and clarified or be eliminated from the RoP.

**Section 403.15** KCP&L reiterates the concerns expressed by EEI with serious objection to the change that would allow a regional entity to appeal the outcome of the regional entity hearing process and this provision should be removed. This additional right given to the regional entity ignores due process and equity to all parties involved in the dispute while removing the ability for the entity to appeal an adverse outcome.

*Giving a regional entity the right to appeal the decision of its own hearing body is not authorized by or contemplated in section 215 of the Federal Power Act or 18 C.F.R. § 39.7. Section 215(e) of the Federal Power Act provides that **a penalty** “shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty . . . .” Likewise, 18 C.F.R. § 39.7(e)(1) similarly provides that **a penalty** will be subject to review by the Commission on its own motion or upon application by the user, owner or operator of the Bulk-Power System that is the subject of the penalty. While these provisions clearly contemplate that the entity to which the penalty would apply can appeal a decision and that the Commission can review a penalty on its own motion, neither section 215 nor § 39.7(e) contemplates or allows the appeal of a finding that **no penalty should be applied**.*

*The structure of the appeals process as established by section 215 and § 39.7 begins when penalties are assessed, and the entities against whom they are assessed can appeal those penalties. No other right to appeal or basis for appeal is provided. Appeals from a regional entity to NERC should be no different. It is inappropriate to attempt to create in the ROP a new right of appeal to NERC for a regional entity when that approach is not consistent with the appeals process contemplated in the FPA or the applicable regulations.*

*As section 403.15 provides, the hearing body is established by the regional entity itself to provide a “fair, independent, and nondiscriminatory process for hearing contested violations and any penalties or sanctions levied.” If the regional entity’s own hearing body does not uphold the proposed penalty or violation, then the dispute should not continue. To establish a procedural mechanism through which a regional entity can appeal what amounts to its own decision provides the regional entity with “two bites at the apple,” which is an inappropriate and unfair advantage in the enforcement process.*

Again, KCP&L would like to repeat the concerns expressed previously related to changes in the RoP and Compliance Monitoring and Enforcement Program (CMEP) in Appendix 4C to the RoP that would allow the Compliance Enforcement Authority (CEA) to appeal findings of a hearing body.

**Section 408.1** The Regional Entity should not be allowed to appeal their own findings. This reference should be removed.

**Section 409** KCP&L expresses concern to the change in language that provides that a CEA is entitled to appeal the final decision of a regional hearing body for the same reasoning provided above concerning RoP section 403.15, and believes this language should be removed.

**Section 412** KCP&L supports comments filed specifically on this item by both EEI and the NERC CCC. KCP&L has serious concerns about proposed new RoP section 412, which provides that a regional hearing body may certify to the NERC Board of Trustees (BOT) for decision “a significant question of policy or interpretation or application of one or more reliability standard requirements, the resolution of which may be determinative of the issues” in the matter before the hearing body. This provision appears to subvert the standards interpretation process, which provides that interpretations are developed by a stakeholder drafting team. Proposed interpretations must be approved by the ballot body and then approved by FERC. The proposed new RoP section 412 is completely separate from the standards interpretation process or at a minimum is not clearly linked to the existing process to allow for the two to work together for improvements. In addition, this proposed process completely ignores the Compliance Application Notice (CAN) process. While there are numerous concerns with the CANs process, it currently invites stakeholder review and comment, unlike the proposed new ROP section 412.

The proposed change raises a number of concerns:

- contradicts the existing standards interpretation process
- significant due process and transparency concerns
- applicability of an interpretation rendered under ROP section 412
- applicability to parties external to the proceeding in which the question was certified
- ability of a certified question to bind other Registered Entities that are not parties to the proceeding

For these reasons, proposed RoP section 412 should be removed in its entirety.

**Section 413** KCP&L believes that this language is too vague and open-ended to offer substantive comments or acceptance of proposed language. However, the concerns expressed by EEI speculating about process outcomes with NERC modifications allowed occurring with no additional checks and balances need to be addressed. NERC should clarify the proposed change to provide that it cannot increase a penalty or change a determination of a hearing body to avoid these possible results, which are very problematic in terms of the due process afforded to Registered Entities.

**Section 500** KCP&L was an active participant in the comments submitted via the NERC CCC, thus all representative comments in that submission are endorsed herein.

**Section 800** KCP&L would suggest that all references within this section to major events and correlative information with Appendix 8 are too vague for inclusion. The type of detail suggested for inclusion here and in Appendix 8 is consideration for EOP004 and the Event Analysis Process for the industry participants. Rules, procedures and rights in this process should be outlined in this document to ensure industry participants understand how these types of occurrences will proceed and what actions are available to each party.

**Section 1400** KCP&L recommends in concert with the NERC CCC that 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) should be revised for consistency. It seems excessive to require 50 members to make requests of NERC to consider amending or repealing Rules of Procedure when the other provisions for other NERC Committees are a much smaller population segment of concerned parties. These are requests for NERC to consider Rules of Procedure changes and not mandates of changes for NERC adherence. KCP&L recommends NERC consider a more commensurate number of requestors reflecting a reasonable representative group of stakeholders by amending the Bylaws for consistency with the current version of RoP1401. To reiterate feedback from the NERC CCC, KCP&L supports the recommendation for NERC to support rules and practices that facilitate its Members providing feedback to the BOT for improvements or efficiencies related to the Rules of Procedure.

#### **Comments on proposed changes to the Sanction Guidelines, Appendix 4C to the Rules of Procedure**

KCP&L reiterates all comments submitted by EEI.

#### **Comments on proposed changes to the CMEP, Appendix 4C to the Rules of Procedure**

KCP&L reiterates all comments submitted by EEI with the following additions or clarifications.

**Section 3.4.1** NERC has addressed the issue of disallowing a Registered Entity from objecting to NERC or FERC participants in an audit arena in section 3.1.5.4; however, we believe this change should also be made to section 3.4.1. KCP&L recommends this for NERC's consideration.

**Section 3.1.6** The changes to this section now introduce further concerns. We iterate our previous comments below. In addition, recommendations and suggestions have implications far beyond the failures of compliance. These should not be formalized in

the audit report and expect an entity's response. In our collaborative efforts to streamline processes to ensure focus on the most important items for BES reliability and security, this inclusion in audit reports will work against the registered entity resources. Recommendations and suggestions are helpful. These may in fact provide value to the registered entity, but are submitted in a manner without full understanding of the entities' processes, procedures and culture. These items should be submitted in a document outside of the formal regulatory audit report as considerations but not kept as part of the regulatory record or in concert with compliance failures where there is an expectation for response or action.

*The proposed removal of the language regarding treatment of recommendations in audit reports is a concern. This should mean that a compliance audit report should be restricted to judgments of findings or no-findings, however, the proposed Rules of Procedure are not clear enough without these statements to ensure recommendations and suggestions will be kept from the compliance audit report. Recommendations and suggestions for improvement have differing implications from failures of compliance.*

**Section 5.11** Kansas City Power & Light recommends section 5.11, the subsections of section 5.11, and section 1.1.24 is removed as the existing NERC Rules of Procedure already address the circumstance as proposed in this new section. In general, the section is very long and difficult to follow. At a minimum, the explanation should be streamlined. That said, all reliability responsibilities are established with Registered Entities by their functional registration. Any JRO's and CFR's are held on file with NERC. Based on those established responsibilities CEA's should pursue compliance actions pursuant to an entities registration and the circumstances and facts surrounding potential violations according to the established CMEP processes and procedures. An ISO/RTO entity may have provisions that have been FERC approved to recover reliability penalties or sanctions levied against an ISO/RTO from its members. If that is the case, that should not be a concern of NERC and NERC should not be involved in that process. NERC should be limited to identifying compliance failures of Registered Entities based on their registration status with NERC and the administration of fines and sanctions already established by Rules of Procedure.

If section 5.11 is included in final submission for approval, KCP&L has additional concerns regarding the following sections:

**Section 5.11.3, second paragraph**

- The paragraph states that an entity identified by NERC and the ISO/RTO as an involved party must submit their intent to participate prior to an agreement between the CEA and the ISO/RTO to settle or the date a CEA issues a Notice of Confirmed Violation with the ISO/RTO. It is not clear how an entity that has been identified by NERC and the ISO/RTO would be aware of either of these circumstances to make such a request. The language here needs to clearly provide the entity a notice that they have been implicated and provide sufficient time for an entity to respond regarding their election to participate.

- The paragraph also states, “The Compliance Enforcement Authority is not required to suspend or delay the enforcement process pending receipt of a request to participate from the specified other entity (ies), nor to revisit or redo any aspect of the enforcement process that has already occurred prior to receipt of the specified other entity (ies) written request to participate”. It is not appropriate in any proceeding to advance the proceedings without all parties who have elected to participate in the proceedings present. The language here needs to specify that NERC and the CEA will only proceed after all entities involved have elected to participate or not to participate.

### **Comments on NERC Event Response Procedures, Appendix 8 to the Rules of Procedure**

KCP&L recommends that this appendix should be eliminated. There are conflicts in this document that have not been coordinated with other efforts in progress. The appendix proposes terms that have not been defined and need further clarity such as “learning organization” and “Bulk Power System Awareness person on duty”. The appendix characterizes changes to the use of the ES-ISAC and NERC Alerts system that have not been proposed for any kind of discussion or process realignment.

NERC is unnecessarily complicating the process by layering another substratum of event delineation that is not well defined on top of the well established Event Criteria in existing Appendix B of the Electric Reliability Organization Event Analysis Process – Version 2. Kansas City Power & Light (KCP&L) strongly recommends NERC eliminate this unclear language and determine from the established Event Criteria and the events in which NERC desires involvement or levels of involvement. The confusion is heightened by the introduction of “major event” as another level of NERC consideration. The event analysis and response procedures introduce additional definitions around events that should be integrated with EOP-004 and with the NERC categories as defined for event analysis. The addition of levels in the process further complicates matters and introduces more opportunity for disagreement due to ambiguities and interpretations. The document references BPS events or events that have the potential to cascade. It is unclear why the RoP document specifically references only one type of event without additional transparency or understanding of priorities of events. The document although well intentioned should not be in RoP at this level of detail where there will or could be conflicts with individual standards and multiple government agencies for reporting purposes (e.g. Department of Energy).

The appendix provides no clarification on Registered Entity rights or privileges during an event response. It is silent on rights of all parties involved in an event and legal or compliance implications in response to these occurrences. The confidentiality agreement has been removed in Appendix C. KCP&L believes very strongly that this should be kept in place as a part of the process.

It is not appropriate for NERC or a Regional Entity to act in the capacity of an operating entity under any operating circumstance. NERC’s involvement should be limited solely

to the after-the-fact analysis of the event. NERC is neither familiar with a very complex electrical network of a Registered Entity and the unique operating behavior of a Registered Entities network. NERC's involvement in any restoration effort would needlessly slow the effort due to the potential need to explain to NERC why certain actions are to be taken and under what circumstances by a Registered Entity. Further, it is the Registered Entity that is functionally responsible for the operation of the bulk power system. NERC is the overseer of BES reliability but has no operating obligations or authority to dictate operating actions under real time operating conditions.

It appears that NERC's intent by way of this Appendix is to perform the analysis of an event of a Registered Entity and to presume to represent a Registered Entity to other governmental agencies or regulatory bodies without the consent of a Registered Entity. This will diminish the culture of accountability that NERC is promoting and further degrade a collaborative working relationship between industry participants and regulators. It is understandable that NERC is anxious to know and be aware of BES operating conditions, circumstances and restoration efforts while an event is transpiring. NERC's stated intention is, "At the initial stage in gathering information about an incident, it is critical to minimize interference with bulk power system operators who are in the process of restoring the system". KCP&L highly recommends NERC not to interfere in any capacity to prevent or delay power system operators from restoration efforts. We recognize that the document states after systems have been returned to a stable operating condition, however, that does not allow the registered entity to review the event to understand failures or patterns for mitigation. Regional or National involvement will slow this process down considerably.

In this section NERC presumes a leadership role in interfacing with "Applicable Government Authorities" regarding the event analysis when NERC has no jurisdiction over other governmental or regulatory bodies. Again, NERC has no right to represent a Registered Entity to any other governmental body or regulatory body without the consent and agreement of a Registered Entity.

The information in Appendix 8 is appropriately captured in the Event Analysis Process documents. The procedure and rules for all parties involved in Event response (NERC, Regional Entities and Registered Entities) should be captured in some manner in the RoP, however, not in the manner presented. As an additional comment, the timing of regional or national involvement must be appropriate and allow for the registered entity to understand what has occurred within its own boundaries. Premature involvement may place the registered entity in a defensive position due to risk mitigation practices and disallow benefits of lessons learned and information sharing before the registered entity truly understands what has occurred. NERC states it will "issue media advisories". Again, NERC has no authority to represent a Registered Entity regarding any statements or representations to the media or the public on behalf of a Registered Entity.

Attachment A is not referenced in the body of Appendix 8 that has been proposed. Either reference Appendix A and its purpose or remove it.

**Conclusion**

KCP&L appreciates the opportunity to submit these comments and respectfully requests that NERC consider the comments stated in this filing.