

Compliance Application Notice — 0030

Compliance Application: Attestations

Posted [DATE]

Primary Interest Groups

NERC

Regional Entities (RE)

Registered Entities

Issue: When an attestation is suitable evidence of compliance.

NERC received a request for clarification regarding the appropriate situations and uses of attestations as evidence of compliance with a reliability standard.

Reliability Objective

Attestations may be appropriate, in certain circumstances, to demonstrate an entity's compliance for the audit period.¹

Background

An attestation is a written statement of fact, voluntarily made under an oath or affirmation, signed by the author, and witnessed for authenticity by a notary public. In certain situations where documentation is not available, attestations, coupled with corroborating evidence, may be provided to auditors and Compliance Enforcement Authorities (CEA) to demonstrate compliance. As with any other piece of evidence, the persuasive value of an attestation will be determined by the auditors and CEA reviewing it.

Compliance Application

There are a limited number of circumstances, provided below, where a written attestation is acceptable as evidence of compliance. In these situations, auditors and CEAs may evaluate the persuasive value of an attestation depending on the quality and specificity of the statements, and any corroborating evidence. An attestation is not a substitution for the obligation to maintain adequate records.

An attestation would be considered appropriate when evidence is not available or is not complete, among other things, due to events outside of the entity's control, such as records being destroyed by a force majeure event including, but not limited to, natural disasters and catastrophic computer

¹ Such as when the evidence retention period is longer than is written in a standard. See Public Notice – NERC Compliance Process Bulletin #2011-001, Data Retention, located at <http://www.nerc.com/page.php?cid=3|22>.

malfunctions. Attestations would also be appropriate to support an entity's position that an event or situation did not occur.

When an entity needs to provide evidence to show that an event did not occur, an attestation can be submitted. An example of this scenario is if an entity must perform a duty when it received a communication. In order to support the entity's position that it did not receive any communication that would require performance, the entity could provide a blank log book showing that no communication occurred and/or statements from entities that would have provided the requesting communication.

In the event that an entity suffers a loss of evidence from events that it cannot control, such as a fire, flood, other natural disaster or event causing the loss of information, an attestation can be used for audit purposes. The registered entity may still be found to be out of compliance, but the surrounding circumstances, i.e., if the event that resulted in the unavailability of the evidence occurred without fault of the entity, could be considered a mitigating factor in the determination of an assessed penalty. Auditors and CEA will evaluate force majeure situations on a case-by-case basis.

In all cases in which an attestation is provided, the auditors will evaluate both the attestation and the quality of the corroborating evidence and the entity providing the attestation may still be found to be out of compliance.

Effective Period for CAN

This CAN is effective upon posting on the NERC Web site and will remain in effect until such time that a future version of the standard or interpretation addresses this specific issue and is enforceable. CAN-0030 could be superseded by a future CAN that addresses this particular Standard and Requirement.

Providing Evidence of Compliance

When providing attestations in the above situations, a registered entity would need to provide supporting evidence as follows:

1. For incomplete records, a registered entity must provide all applicable records in its possession.
2. To support a position that an event did not occur, a registered entity must provide:
 - a. Log books or records (either hardcopy or electronic) that show a blank entry or lack of an entry,
 - b. A documented process to demonstrate how an event or request would have been recorded.
 - c. Additional statements from other internal operating personnel or from other entities that have actual knowledge of the event, or
 - d. Other corroborating evidence to show that an event did not occur.
3. When no evidence remains from a force majeure event, registered entities must provide records associated with the event's occurrence as well as a list of the actual data that was lost due to the event.

Registered entities may use the NERC Attestation Form that is attached to this CAN, or they may use their own attestation or affidavit document. The attached form is meant to be used as a guideline and is not a mandatory format for submitting an attestation to an auditor.

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This document is designed to convey compliance guidance from NERC's various activities. It is not intended to establish new requirements under NERC's Reliability Standards or to modify the requirements in any existing NERC Reliability Standards. Compliance will continue to be determined based on language in the NERC Reliability Standards as they may be amended from time to time. Implementation of this compliance application notice is not a substitute for compliance with requirements in NERC's Reliability Standards.

(Sample Attestation Form)

[Add Registered Entity Letterhead]

Registered Entity Name: (NERC ID# NCR#####)

County of:

City of:

ATTESTATION

I, [NAME], certify that I am [TITLE], [REGISTERED ENTITY]; that I am authorized to execute this Affidavit; that I am familiar with the [REGISTERED ENTITY]'s attached statements; that, to the best of my information, knowledge and belief, the statements and supporting documents appended to this verification are true and correct as of the date of signing and will be updated on a continuing basis until final resolution.

[SIGNATURE]
[NAME]
[TITLE]
[REGISTERED ENTITY]
[CONTACT INFORMATION – ADDRESS,
PHONE, FAX, E-MAIL]

Subscribed and sworn to before me on the [DAY] day of [MONTH][YEAR].

[SIGNATURE]
Notary Public

My Commission Expires: