



NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

August 25, 2009

TO: INDUSTRY STAKEHOLDERS

**REQUEST FOR COMMENTS ON PROPOSED PROCEDURE FOR REQUESTING  
AND RECEIVING TECHNICAL FEASIBILITY EXCEPTIONS TO NERC CRITICAL  
INFRASTRUCTURE PROTECTION STANDARDS AND RELATED AMENDMENTS  
TO NERC RULES OF PROCEDURE**

On January 18, 2008, the Federal Energy Regulatory Commission (“FERC”) issued its Order No. 706 approving mandatory Reliability Standards for Critical Infrastructure Protection. In that order at paragraphs 157-222, FERC directed NERC to establish a procedure for requesting and receiving Technical Feasibility Exceptions (“TFEs”) to the NERC Critical Infrastructure Protection Standards. The attached revisions to NERC’s proposed Appendix 4D to the Rules of Procedure, along with the documents detailing NERC’s proposed TFE program, establish that procedure.

NERC posted a proposed Appendix 4D to the Rules of Procedure to establish a procedure for the submission, review, audit, and approval of TFEs on March 16, 2009 for industry stakeholder comment. NERC received a total of 52 comments on the proposed TFE program. Based on these comments and comments received from the Regional Entities, NERC has revised the TFE program implementation documents and the proposed Appendix 4D of the Rules of Procedure. These documents are posted herein for public comment.

The principal revisions from the March 16 posting are the following:

- Regional Entities instead of NERC will have responsibility for the initial screening and substantive review of TFEs
- NERC has removed the requirement for prior approval of TFEs
- Responsible Entities must file a notice of TFE request electronically with Regional Entities and must maintain the detailed explanation, justification, and mitigation measures, and other supporting material at their business locations for review and auditing
- NERC has removed the provision deeming a TFE denied if action has not been taken on the request within a specified period.

**COMMENTS DUE: SEPTEMBER 8, 2009**

The Technical Feasibility Exception documents posted for comment include:

- 1) the NERC and Regional Entity Plan for Implementing Technical Feasibility Exceptions to Critical Infrastructure Protection Reliability Standards;
- 2) the Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards, Appendix 4D to the Rules of Procedure (Version 1);
- 3) related other amendments to NERC's Rules of Procedure (these are unchanged from the March 16 posting);
- 4) Part A of the Technical Feasibility Exception Request Worksheet; and
- 5) Instructions to Part A of the Technical Feasibility Exception Request Worksheet.

The NERC and Regional Entity Plan for Implementing Technical Feasibility Exceptions is an overview document describing the Technical Feasibility Exception program and its implementation at the NERC and Regional Entity level. The Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards, Appendix 4D to the Rules of Procedure, include the changes NERC is proposing to make to its Rules of Procedure in order to implement the Technical Feasibility Exception program. This proposed Appendix 4D (Version 1) has been revised from the proposed Appendix 4D that NERC posted for industry comment on March 16, 2009 (Version 0).

Part A of the Technical Feasibility Exception Request Worksheet is the notification document to a Regional Entity that a Registered Entity is requesting a Technical Feasibility Exception. Part A must be submitted in electronic form through a Regional Entity's secure portal using the proposed template and must contain the information specified in Part A. The instructions for submitting Part A to the Regional Entities is also posted for public comment. Concurrently with its submission of Part A, an entity must prepare and maintain a Part B that will include the detailed material to support a Technical Feasibility Exception request (*i.e.* Part B must include the documents, drawings, and other information necessary to provide the details and justification for the requested Technical Feasibility Exception). Because Part B information will be company-specific, there is no proposed template included here for public comment.

NERC is hereby requesting comments on the documents described above from industry stakeholders. Comments are due by September 8, 2009 and must be submitted in a Word document to Sara Minges ([sara.minges@nerc.net](mailto:sara.minges@nerc.net)). Following review of, and any appropriate revisions in response to, comments, the proposed Rules of Procedure Appendix 4D changes will be submitted to the NERC Board of Trustees for approval. Amendments to NERC's Rules of Procedure must be approved by the NERC Board of Trustees and the Federal Energy Regulatory Commission before they take effect.

Sincerely,

Michael J. Assante  
Vice President and Chief Security Officer

NERC and Regional Entity Plan for Implementing  
Technical Feasibility Exceptions to Critical  
Infrastructure Protection Reliability Standards

**NERC and Regional Entity Plan for Implementing  
Technical Feasibility Exceptions to  
Critical Infrastructure Protection Reliability Standards**

**Background**

On January 18, 2008, the Federal Energy Regulatory Commission issued Order No. 706<sup>1</sup> approving eight Critical Infrastructure Protection (“CIP”) Reliability Standards (CIP-002-1 through CIP-009-1). The CIP Reliability Standards require certain users, owners, and operators of the bulk power system to comply with specific requirements to safeguard critical cyber assets. The Commission noted generally that there is legacy equipment on the bulk power system that may not meet the CIP requirements on day one, and while equipment replacement will often be appropriate to comply with the CIP Reliability Standards, such as in instances where equipment is near the end of its useful life, the possibility of being required to replace equipment before the end of its useful life is a valid concern. As a result, the Commission proposed to allow, in the near term, exceptions from compliance based on the concept of “technical feasibility” (referred to as Technical Feasibility Exceptions, or TFEs) in a limited set of circumstances.<sup>2</sup> FERC observed that exceptions may be recognized, not only for technical feasibility reasons, but also for operational and safety considerations.

The Commission directed NERC “to develop a set of criteria to provide accountability when a responsible entity relies on the TFEs in specific Requirements of the CIP Reliability Standards.”<sup>3</sup> In directing NERC to establish a procedure through which Registered Entities can submit TFEs to NERC or the Regional Entities for review, audit and approval, the Commission stated that “structural elements of this framework [should] include mitigation steps, a remediation plan, a timeline for eliminating use of the technical feasibility exception unless appropriate justification is otherwise provided, regular review of whether it continues to be necessary to invoke the exception, internal approval by the senior manager, wide-area approval through the ERO’s audit process, and cooperation with the ERO to provide the Commission with high-level, wide-area analysis regarding the effects [of] the technical feasibility exception on the reliability of the Bulk-Power System.”<sup>4</sup> Additionally, the Commission directed NERC to file an annual report with the Commission:

[W]e direct the ERO to submit an annual report to the Commission that provides a wide-area analysis regarding use of the technical feasibility exception and the effect on Bulk-Power System reliability. The annual report must address, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception.<sup>5</sup>

The Commission did not require pre-approval of a TFE prior to its use by a Registered Entity. Rather, the Commission stated that “Regional Entities should, in the first instance, receive and catalogue notices of TFEs that are claimed.”<sup>6</sup> The Commission stated that “such notices must include estimates

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<sup>1</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, January 18, 2008, Docket No. RM06-22-000 (“Order No. 706”).

<sup>2</sup> Order No. 706 at P 158.

<sup>3</sup> *Id.* at P 222.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at P 220

<sup>6</sup> *Id.* at P 213

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of the degree to which mitigation measures achieve the goals set by a CIP Reliability Standard and be in sufficient detail to allow verification of whether reliance on exceptions (or the associated mitigation measures), adequately maintains reliability and does not create reliability issues for neighboring systems.”<sup>7</sup>

Further, Order No. 706 provided that “actual evaluation and approval of TFEs should be performed in the first instance in the compliance audit process,” in order to “allow assessment of exceptions within their specific context and thus facilitate greater understanding in evaluating individual exceptions, as well as related mitigation steps and remediation plans.”<sup>8</sup> Importantly, the Commission stated that this process “will allow the ERO and the Regional Entities, informed by the initial notices . . . to include personnel in audit teams with sufficient expertise to judge the need for a technical feasibility exceptions and the sufficiency of preferred mitigation measures.”<sup>9</sup> The Commission further noted that “General reliance on the audit process does not preclude the Commission, the ERO or a Regional Entity from exercising its authority to review a claimed exception, whether resulting from a complaint, an incident or on its own initiative outside of the audit process.”<sup>10</sup>

In its subsequent Order 706-A, issued May 16, 2009,<sup>11</sup> the Commission stated that it “expect[s] Regional Entities to process and evaluate requests for technical feasibility on a fair and consistent basis.”<sup>12</sup> The Commission stated it would “leave to the discretion of the ERO whether the development of a uniform procedure, such as a revision to the NERC Rules of Procedure, is appropriate to provide the expected level of consistency in processing technical feasibility exceptions.”<sup>13</sup> Additionally, the Commission stated that “[t]he ERO or a Regional Entity will need to approve any technical feasibility exception based on a claim that the equipment is not near the end of its useful life, taking into account whether the technical feasibility exception is needed and whether the mitigation and remediation steps are adequate to the circumstance.”<sup>14</sup>

NERC and Regional Entities identified the following characteristics for the proposed TFE process:

- (i) the process should produce the information needed to review and approve TFE requests;
- (ii) the process should be straightforward and not unduly burdensome to NERC, Registered Entities, and Regional Entities;
- (iii) the process should maintain the security of sensitive information in accordance with Section 1500 of the NERC Rules of Procedure;
- (iv) the process should leverage existing resources at NERC and the Regional Entities to the extent possible;
- (v) the process should seek to minimize the impact that may result from a large volume of requests; and
- (vi) the process should clearly define the roles and responsibilities of NERC, the Regional Entities, and the Registered Entities.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at P 214.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at fn. 72.

<sup>11</sup> *Order Denying Rehearing and Granting Further Clarification*, (Order No. 706-A), May 16, 2008, Docket No. RM-6-22-001.

<sup>12</sup> *id.* at P 24.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at P 25.

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An approved TFE does not relieve the Registered Entity of its obligation to comply with the applicable Reliability Standard. Rather, a TFE authorizes a departure from strict compliance with the Reliability Standard, but requires the Registered Entity to implement and maintain an alternative approach to achieving compliance with the applicable Reliability Standard through the use of compensating and/or mitigating measures (*i.e.* such as through the submission of a Mitigation Plan). Additionally, a TFE must typically be requested for, and will be approved only for, a limited duration, until a stated expiration date. The Registered Entity will be expected to achieve full compliance with the Reliability Standard by the expiration date. Under limited, justified circumstances, a TFE request may be approved without a specified expiration date, subject to periodic review to verify continuing justification for the TFE.

On July 1, 2008, approximately 360 Registered Entities became obligated to be compliant with standards for which TFEs can be taken, and an additional 1,480 Registered Entities will become similarly obligated on January 1, 2010.<sup>15</sup> NERC and the Regional Entities propose the following process, consistent with the FERC directives stated above, to manage the potentially large amount of TFEs.

### I. Applicability

Requests for a TFE may be made for the following CIP Reliability Standards that specifically provide exceptions in those cases for which the required compliance directive is “technically infeasible”:<sup>16</sup>

- CIP-005-1: Requirements R2.4, R2.6, R3.1, and 3.2
- CIP-006-1: Requirement R1.1
- CIP-007-1: Requirements R 2.3, R3.2, R4, R4.1, R5.3, R5.3.1, R5.3.2, R5.3.3, R6, and R6.3.

NERC will revise this list as Reliability Standards are revised and approved by FERC. All other Critical Infrastructure Protection and other NERC Reliability Standards shall follow the existing processes under the CMEP, and are not eligible for TFEs.

A Registered Entity may request and obtain approval for a TFE when strict compliance with an applicable requirement, evaluated in the context or environment of the Registered Entity’s covered asset that is the subject of the TFE Request:

- (i) is not technically possible, or is precluded by technical limitations; or
- (ii) is operationally infeasible or could adversely affect reliability of the bulk electric system to an extent that outweighs the reliability benefits of strict compliance with the applicable requirement; or
- (iii) while technically possible and operationally feasible, cannot be achieved by the date by which the Registered Entity is required to be in compliance with

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<sup>15</sup> According to the NERC Compliance Registry dated June 23, 2009, there are a total of 1,840 Registered Entities. Of these, 360 total Registered Entities are registered as Reliability Coordinators, Balancing Authorities, and Transmission Operators, and were therefore required to be compliant with Reliability Standards CIP-002-001 through CIP-009-001 by July 1, 2008. The remaining entities currently in the registry, numbering 1,480 in total, are required to be compliant with Reliability Standards CIP-002-1 through CIP-009-1 by December 31, 2009.

<sup>16</sup> A table summarizing the applicable Reliability Standard requirements eligible for TFE requests and justification for inclusion of each requirement in the TFE program is attached as Exhibit A to this document.

- the applicable requirement, due to factors such as scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or
- (iv) would pose safety risks or issues that outweigh the reliability benefits of strict compliance with the applicable requirement; or
  - (v) would conflict with, or cause the Registered Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Registered Entity, the covered asset or the related facility that must be complied with and cannot be waived or exempted; or
  - (vi) would require the incurrence of costs that far exceed the benefits to the reliability of the bulk electric system of strict compliance with the applicable requirement, such as for example by requiring the retirement of existing equipment that is not capable of strict compliance with the applicable requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of strict compliance, where the incremental risk to the reliable operation of the covered asset, the related facility and the bulk electric system of continuing to operate with the existing equipment can be shown to be minimal.

## **II. TFE Requests and Responsibilities of Registered Entities**

- Registered Entities are expected to use due care and diligence in preparing TFEs that achieve the goals of the Reliability Standards eligible for TFEs, mitigate any potential impacts to reliability of the bulk power system, and provide for timely transition to compliance without an exception.
- A Registered Entity may request a TFE for eligible CIP standards and requirements. A TFE may be based on operational or safety considerations as well as equipment limitations.
- Each request for a TFE will consist of two parts. Part A is the notification to a Regional Entity that a Registered Entity is requesting a TFE. Part A must be submitted in electronic form through a Regional Entity’s secure portal using the provided template. Regional Entities will use Part A for initial screening for eligibility. NERC will use Part A information to develop its annual, wide-area report to the Commission and to provide oversight to the TFE process.
- Part B is a general label for the detailed material to support a TFE request and includes the documents, drawings, and other information necessary to provide the details and justification for the requested TFE. Part B must include also include a description of the alternative mitigating measures the Registered Entity will use while the TFE is in effect to achieve the purposes of the Reliability Standard. The Registered Entity must develop the Part B material at the same time as Part A.
- Part B must be available at the Registered Entity’s location for review by the Regional Entity and/or NERC during an audit, spot check, or other compliance inquiry. A Regional Entity may also require that all or a portion of Part B must be filed with the Regional Entity, provided that can be accomplished in a secure manner that does not compromise the confidentiality of the information.
- A TFE request that is accepted by a Regional Entity after initial screening will provide the Registered Entity with a “Safe Harbor” for compliance with the particular CIP standard or requirement until a final determination is made on the request.
- A TFE request that is approved by a Regional Entity will provide the Registered Entity with a “Safe Harbor” for compliance with the particular CIP standard or requirement until the expiration

date of the TFE, insofar as the entity maintains compliance with the terms of the approved TFE, including the mitigation plan and reporting schedule.

### **III. Procedures for Evaluation of a TFE Request (Regional Entities and NERC)**

- A Regional Entity will conduct an initial screening of all TFE requests by closely analyzing Part A of the worksheet that will be completed electronically by the Registered Entity requesting a TFE. This initial screening will be completed within 60 days of receipt of the TFE. Upon this 60-day review, the Regional Entity will notice the Registered Entity that a) the TFE has been accepted on an interim basis; b) the TFE has not been accepted but would be accepted if the registered entity makes certain changes to the TFE and resubmits within 30 days; or c) the TFE is denied (including a basis for denial).
- If the Regional Entity accepts the TFE in this initial screening, the Registered Entity will be granted “Safe Harbor” from compliance with the CIP Reliability Standard Requirement until a final determination on the requested TFE is issued.
- Note: Safe Harbor is NOT granted until the Regional Entity has accepted the TFE during initial screening. If a TFE request is found to be deficient in the initial screening by the Regional Entity, the Registered Entity shall be provided the opportunity to remedy the deficiency. The Regional Entity should give specific instructions to the Registered Entity regarding what needs to be done to submit an acceptable TFE request. If a correction is required, the correction should be submitted by the Registered Entity within 30 days. NERC reserves the right to request from the entity at a later date additional information that is necessary from the Registered Entity to be included as part of the TFE request.
- After the initial acceptance of the TFE request, the Regional Entity will then conduct the final determination regarding the TFE request in accordance with established NERC and Regional Entity processes (audit, spot check, special TFE review).
- In order to make a final determination on a TFE request, the Regional Entity will conduct a thorough review of the TFE, review mitigating measures, and prepare its justification for approval or denial of the TFE within one year of the initial submittal of the TFE, unless otherwise extended by the Regional Entity, with concurrence by NERC.
- The Regional Entity’s thorough review of the TFE will include a verification of supporting documentation and verification that the entity is performing the compensating measures and steps to eliminate the TFE. This review will either be conducted onsite at the Registered Entity or in an alternative manner determined by the Regional Entity in such a way that provides adequate protection of sensitive data. This review will result in either final approval of the TFE by the Regional Entity, conditional approval subject to certain modifications being made within a certain time directed by the Regional Entity, or revocation of the TFE. The Regional Entity shall notify NERC in advance with the date and location where the final review will occur so NERC may participate at any time during the review as part of its oversight role and in order to ensure consistency.
- Regional Entities must consider scheduling priorities for Registered Entities with more encompassing or critical TFEs. Consideration should be given to separate CIP audits from audits of other Reliability Standards to allow greater flexibility in scheduling, if the volume of TFE review warrants.

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- Regional Entities must monitor TFE workload and adjust CIP audit and/or TFE final review schedules as necessary, informing NERC of any changes to audit schedules resulting from TFE reviews. In some cases, it may be necessary to adjust TFE final review schedules for entities with a large number of TFE requests so that NERC staff can participate and assist in the processing of TFE requests.
- If a TFE received final approval by the Regional Entity following the detailed verification, the Regional Entity will provide notice to NERC of the approval and NERC will have 30 calendar days from the date NERC received the notice to confirm the Regional Entity's approval or reject the TFE with detailed justification. The Regional Entity shall notify the Registered Entity of NERC's action either way.
- A rejection of a TFE must include a reasoned basis for the rejection and must provide the Registered Entity a reasonable opportunity (not to exceed 60 days) to present a mitigation plan or to resubmit a modified TFE request. Safe Harbor will not be granted during the time the Registered Entity is correcting a rejected TFE request. If the Registered Entity submits an acceptable modified TFE request or mitigation plan, the Safe Harbor will relate back to the time of the original notice.
- Should a compliance audit or other CMEP-sanctioned process such as a spot check or self-report find that a company has not acted within the scope of its claimed TFE, the matter will be referred to the Regional Entity's compliance program for processing as a potential Reliability Standard compliance violation.
- If a TFE is denied or revoked by a Regional Entity or NERC any time after interim acceptance by the Regional Entity and the Registered Entity does not submit an acceptable modified TFE request, the case will be referred to enforcement at the Regional Entity. For a TFE that was accepted on an interim basis and later revoked, the noncompliance date will begin at the time of the notice of revocation of the TFE. If, however, the Regional Entity found the TFE was justified and acceptable but the Registered Entity did not perform its obligations under the TFE, the TFE will be revoked and the date of noncompliance will relate back to the original date the Registered Entity was not compliant with the Reliability Standard.
- There may be cases when a Regional Entity provides interim acceptance of a TFE and, after further consultation with other Regional Entities and NERC staff, the Regional Entity believes that the TFE is no longer appropriate. In such case, the Regional Entity shall provide written notice to the Registered Entity that the TFE is revoked (and on what basis), and provide guidance to the Registered Entity on what steps the Regional Entity could take to qualify for the TFE. In either case, a reasonable period of time should be provided for the Registered Entity to remedy the difference in requirements between the TFE that was accepted on an interim basis and any new requirements identified by the Regional Entity. This approach is necessary to ensure consistency in the application of the TFE evaluation criteria. The Registered Entity will remain under the Safe Harbor provision unless it chooses not to modify the TFE as required or fails to do so within the required time. If a Registered Entity chooses not to modify the TFE requirements as required, the noncompliance date will begin at the time of the notice of revocation of the TFE.
- Part A of each TFE request that has been accepted by the Regional Entity on an interim basis will be posted to a database in a confidential manner, and shall be available for review by NERC and other Regional Entities to ensure consistency.
- A Registered Entity may appeal a denial or revocation of a TFE requests, Such appeals will be addressed through the normal compliance process, including, if necessary, through a hearing. As

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in any Regional Entity hearing, disputes should be limited to the facts and circumstances of an alleged violation resulting from the factual issues of a denied TFE and not on questions of law.

- Regional Entities will prepare a written report following the detailed evaluation and approval of a TFE within 30 days and will submit this report to NERC.

### IV. Regional Entities' Roles and Responsibilities

- Regional Entities will develop an electronic method for Part A submission of TFE requests by Registered Entities.
- Regional Entities will receive and catalogue notices of TFEs that are claimed by Registered Entities.<sup>17</sup>
- Regional Entities will have in place a process for initial review and screening of TFEs within 60 days of their submittal, based on criteria provided by NERC.
- Regional Entities will have in place a process for final review and approval of TFEs within one year of their submittal, unless otherwise extended by the Regional Entity with the concurrence of NERC, based on criteria provided by NERC.
- Each Regional Entity must use the Part A request form developed by the Regional Entities and NERC to implement an electronic system for receiving and cataloging TFE requests. This will ensure consistency across regions in administration of the TFE program.
- Regional Entities will provide initial screening and interim acceptance or rejection of a TFE request. If a TFE request is rejected, the Regional Entity will provide the Registered Entity a detailed basis for the rejection.
- The Regional Entity processing a TFE request will inform NERC of the determination made with respect to the TFE, and NERC will have the authority to reject the TFE request on a case-by-case basis during the review period. NERC will have staff available to provide consultation with the Regional Entity staff on whether a TFE should be granted or denied, as needed.
- Regional Entities will make TFE information accessible to NERC staff for review on a timely basis in a manner that safeguards sensitive information from inappropriate disclosure.
- Although certain screening criteria will be required for the initial receipt and cataloging of TFEs at the Regional Entity level, actual evaluation and approval of TFEs shall be conducted pursuant to the NERC-approved process, either by the Regional Entity, subject to Commission and NERC oversight, or by NERC, as appropriate.
- Regional Entities will manage the enforcement process, and as needed, the hearing process, in instances in which a TFE is not accepted or in instances where an entity fails to implement measures detailed in the TFE, subject to case-by-case exceptions.
- Regional Entities will provide a final report to NERC within thirty (30) days following the detailed verification of a TFE and following closure of a TFE.
- Regional Entities must provide TFE information to NERC in the format that NERC requires on a timely basis.

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<sup>17</sup> *Id.* at P 18.

## V. NERC's Roles and Responsibilities

- NERC will be responsible for oversight and consistency of the TFE program, including oversight of the TFE program at the Regional Entity level.
- NERC will review TFEs to ensure that Regional Entities are applying criteria correctly and consistently across regions, and provide feedback to the regions, as appropriate. NERC has the authority to provide final approval or disapproval of TFEs to resolve consistency or technical issues, but intends for the majority of decisions to be made by Regional Entities.
- NERC, working in close collaboration with Regional Entities, will approve common templates and electronic forms for submittal of TFEs by Registered Entities.
- NERC will work collaboratively with the Regional Entities to establish consistent processes and tools needed to receive, catalogue, and approve TFE requests. This should include a complete inventory of TFEs in searchable format. Such a process should be capable of being implemented over the existing NERC and Regional Entity systems.
- NERC and the Regional Entities will maintain a current list of CIP requirements for which TFEs are permitted. This will include an evaluation and proposal by NERC of class-type TFEs applicable to broad classes of devices and equipment. NERC will approve class-type TFEs that meet the goals of the Reliability Standards, subject to exceptions. Regional Entities will still be responsible for approving a Registered Entity's TFE based on the unique mitigation and resolution plan. These class-type TFEs shall be maintained in a list by NERC and be developed to communicate these class-based TFEs to Registered Entities and Regional Entities. In its compilation of a list of class-type TFEs, NERC will include an ID number that the Registered Entity can reference in future electronic submittals of TFE requests for these classes of equipment. These class-type TFEs may include expiration dates to allow Registered Entities time to address any necessary technology issues that are required to become compliant with the CIP Reliability Standards.
- NERC will develop reporting requirements for the Regions and administrative procedures to maintain an inventory of TFE requests and TFE grants, and shall share this information among the appropriate NERC and Regional Entity staffs.
- NERC will develop criteria needed for data in order to develop an annual report to be provided to the Commission that provides a wide-area analysis regarding the use of TFEs and the effect on bulk power system reliability. NERC's annual report will address, at a minimum, the frequency of the use of TFEs, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception.

## VI. Other Procedural Matters

- NERC will seek Commission approval of the attached proposed Appendix 4D to the NERC Rules of Procedure that codifies the description above of the procedures for seeking approval of TFEs. Proposed Appendix 4D will be a modified version of the draft Appendix 4D that was posted for industry comment in March 2009 that incorporates the relevant provisions outlined in this plan.
- In advance of this filing, this proposal and the attached proposed Appendix 4D to the NERC Rules of Procedure is being posted for industry review, and NERC will accept comments on this proposal on or before [September 4, 2009]. NERC and the Regional Entities have already received

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substantial industry comment on both the March 2009 NERC proposal and the “Joint Regional Entity Proposal to Implement Critical Infrastructure Protection Reliability Standards Technical Feasibility Evaluations Draft for NERC Consideration 6/30/2009,” upon which this proposal is based. Because those prior comments were considered in the development of this proposal, NERC would expect any comments on this proposal to be focused on the structure of the TFE program and the assignment of roles and responsibilities to NERC and Regional Entity staff as proposed herein. NERC does not anticipate substantial comments on issues that have been previously raised and considered, such as the specific Reliability Standards for which TFEs would be applicable.

Because of the pressing need to provide Registered Entities with a mechanism for requesting TFEs, NERC and the Regional Entities will begin accepting TFE requests as soon as the electronic portal described above for receipt of Part A of the TFE request is available, which is expected to be [September 17, 2009]. This time frame should enable NERC and the Regional Entities an adequate opportunity to consider industry comments on this proposal. NERC and the Regional Entities believe the provisions of Order Nos. 706 and 706-A provide sufficient authority and description of the necessary elements to begin the TFE process in advance of obtaining formal approval of Appendix 4D from the Commission. On July 1, 2009, NERC issued interim guidance on how to process TFE requests. This interim guidance is available at [http://www.nerc.com/files/2009-006\\_Public%20Notice-V1.pdf](http://www.nerc.com/files/2009-006_Public%20Notice-V1.pdf). NERC and the Regional Entities intend to process TFE requests using the interim guidance until the final TFE process is approved by FERC and becomes effective. At that time, the interim process will be rolled into the final TFE process. Upon implementation by NERC and the Regional Entities of a final TFE process, any TFE requests that are pending under the interim program will be subject to substantive review under the final program.

Exhibit A  
Reliability Standard Requirements That Allow For  
Technical Feasibility Exceptions

**RELIABILITY STANDARD REQUIREMENTS THAT ALLOW FOR TECHNICAL FEASIBILITY EXCEPTIONS**

	<b>Reliability Standard Requirement</b>	<b>Justification for Inclusion in the TFE Program</b>
1	CIP-005-1, R2.4	Standard provides language “where technically feasible”
2	CIP-005-1, R2.6	Standard provides language “where technically feasible”
3	CIP-005-1, R3.1	Standard provides language “where technically feasible”
4	CIP-005-1, R3.2	Standard provides language “where technically feasible”
5	CIP-006-1, R1.1	Standard provides for “alternative measures.”  The Commission’s Order 706 at P 559 also provides:  The Commission believes that allowing a technical feasibility exception to Requirement R1.1 of CIP-006-1, with the changes discussed in the Technical Feasibility section of this Final Rule, should address commenters’ concerns. Specifically, the Commission acknowledges that some circumstances merit reliance on mitigation strategies that are ongoing and effective, so long as they are justified and reviewed periodically. This should alleviate the concern of commenters that the Commission is not allowing exceptions to Requirement R1.1 on a long-term basis.
6	CIP-007-1, R2.3	Standard provides an exception for “technical limitations.”
7	CIP-007-1, R3.2	Standard provides for “compensating measures” where the requirement cannot be met.  The Commission’s Order 706 at P 597 also provides:  The Commission affirms its proposals with respect to technical feasibility and acceptance of risk. Therefore, the Commission directs the ERO to eliminate the acceptance of risk language from Requirements R2.3 and R3.2. However, as discussed in the CIP NOPR, this leaves intact the exception for technical limitations in Requirement R2.3, so long as the treatment of Requirement R2.3 conforms to our findings regarding the technical feasibility exceptions.
8	CIP-007-1, R4	Standard provides language “where technically feasible.”
9	CIP-007-1, R4.1	Standard provides for “compensating measures” where the requirement cannot be met.  The Commission’s Order 706 at P 622 also provides:  Therefore, the Commission directs the ERO to ... attach the same documentation and reporting requirements to the use of technical feasibility in Requirement R4, pertaining to malicious software prevention, as elsewhere.  (NERC is including this standard because R4.1 also pertains to malicious software prevention)
10	CIP-007-1, R5.3	Standard provides language “where technically feasible.”
11	CIP-007-1, R5.3.1	This subrequirement is included based on the “where technically feasible” language in CIP-007-1, R5.3
12	CIP-007-1, R5.3.2	This subrequirement is included based on the “where technically feasible” language in CIP-007-1, R5.3
13	CIP-007-1, R5.3.3	This subrequirement is included based on the “where technically feasible” language in CIP-007-1, R5.3
14	CIP-007-1, R6	Standard provides language “where technically feasible.”
15	CIP-007-1, R6.3	Standard provides language “where technically feasible.”

Procedure for Requesting and Receiving Technical  
Feasibility Exceptions to NERC Critical  
Infrastructure Protection Standards, Appendix 4D to  
the Rules of Procedure (Version 1)



**FOR COMMENT**  
**Revisions to 3-16-09 Posting**

**PROCEDURE FOR REQUESTING AND RECEIVING**  
**TECHNICAL FEASIBILITY EXCEPTIONS**  
**TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**APPENDIX 4D TO THE RULES OF PROCEDURE**

**Version 1**

**[Month, Day] 2009**

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**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**1.0 INTRODUCTION**

**1.1. Purpose**

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation (NERC) provides the procedure by which a Responsible Entity may request and receive an exception from compliance with the terms of a Requirement of certain NERC Critical Infrastructure Protection (CIP) Standards on the grounds of technical feasibility or technical limitations, where the text of the Requirement provides for deviation from compliance with its terms on such grounds. Such an exception is referred to in this Appendix as a Technical Feasibility Exception or TFE. This Appendix is intended to implement the authorization granted by FERC to allow such exceptions to Requirements of CIP Standards.<sup>1</sup>

**1.2. Authority**

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. As such, this Appendix has been approved by (i) the NERC Board of Trustees and (ii) FERC. Any future revisions to this Appendix must be adopted in accordance with Article XI, section 2 of the NERC Bylaws and Section 1400 of the NERC Rules of Procedure, including approval by the NERC Board of Trustees and by FERC, in order to become effective.

**1.3. Scope**

This procedure for requesting and obtaining approval of TFEs is applicable only to those Requirements of CIP Standards CIP-002 through CIP-009 that expressly provide either (i) that compliance with the terms of the Requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the Requirement. As of the effective date of Version 1 of this Appendix, the Applicable Requirements are the following:

CIP-005-1: R2.4, R2.6, R3.1 and R3.2

CIP-006-1: R1.1

CIP-007-1: R2.3, R 3.2, R4, R 4.1, R5.3, R 5.3.1, R 5.3.2, R 5.3.3, R6 and R6.3

Subsequent versions of these Requirements will also be eligible for TFEs if they continue to expressly provide either (i) that compliance with their terms is required where or as technically feasible or (ii) that technical limitations may preclude compliance with the terms of the Requirement.<sup>2</sup> Other Requirements of CIP Standards may become Applicable Requirements as

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<sup>1</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, 122 FERC ¶ 61,040 (2008) (Order No. 706), at PP 157-222.

<sup>2</sup> Order No. 706 at P 157 and note 65 and P 178.

the result of revisions to the CIP Standards in accordance with the NERC Bylaws and Rules of Procedure including Appendix 3A, *Reliability Standards Development Procedure*.

## 2.0. DEFINITIONS

For purposes of this Appendix, the following terms shall have the following meanings.

**2.1 Alleged Violation:** A potential violation of an Applicable Requirement for which the Compliance Enforcement Authority has determined that evidence exists to indicate a Responsible Entity has violated an Applicable Requirement.

**2.2 Annual Report:** The annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 12.0 of this Appendix.

**2.3 Applicable Governmental Authority:** FERC within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.

**2.4 Applicable Requirement:** A Requirement of a CIP Standard that expressly provides either (i) that compliance with the terms of the Requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the Requirement.

**2.5 Balancing Authority:** A Responsible Entity that is registered in the Compliance Registry for the reliability function of Balancing Authority.

**2.6 BOTCC:** The Compliance Committee of the NERC Board of Trustees.

**2.7 CCC:** The NERC Compliance and Certification Committee.

**2.8 CIP Standard:** Any of NERC Standards CIP-002 through CIP-009.

**2.9 Classified National Security Information:** Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35. [NOTE: This definition will be expanded, or an additional definition added, to include any similar Canadian or provincial requirements.]

**2.10 Compliance Audit:** A systematic, objective review and examination of records and activities to determine whether a Responsible Entity meets the requirements of applicable Reliability Standards, conducted in accordance with the NERC or approved Regional Entity CMEP.

**2.11 Compliance Enforcement Authority:** NERC or a Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

**2.12 Compliance Monitoring and Enforcement Program or CMEP:** The Compliance Monitoring and Enforcement Program of NERC (Appendix 4C to the NERC Rules of Procedure) or the approved program of a Regional Entity, as applicable.

**2.13 Compliance Violation Investigation:** A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred, conducted in accordance with the CMEP.

**2.14 Compliance Registry:** A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for purposes of compliance that perform one or more functions in support of reliability of the bulk power system. The Compliance Registry is used to determine the Reliability Standards applicable to the Responsible Entity.

**2.15 Confidential Information:** (i) Confidential business and market information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) cybersecurity incident information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) and other information that is designated as Confidential Information in Section 11.0 of this Appendix.

**2.16 Covered Asset:** A Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

**2.17 Critical Assets:** Facilities, systems and equipment which, if destroyed, degraded or otherwise rendered unavailable, would affect the reliability or operability of the bulk power system.

**2.18 Critical Infrastructure:** Existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

**2.19 Critical Cyber Assets:** Cyber Assets essential to the reliable operation of Critical Assets.

**2.20 Critical Energy Infrastructure Information:** Specific engineering, vulnerability, or detailed design information about proposed or existing Critical Infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on Critical Infrastructure; and (iii) does not simply give the location of the Critical Infrastructure.

**2.21 Cyber Assets:** Programmable electronic devices and communications networks including hardware, software and data.

**2.22 Effective Date:** The date, as specified in a notice disapproving a TFE Request or a Notice of Revocation, on which the disapproval or revocation becomes effective, and which shall be no earlier than the thirty-first day following the date of the notice.

**2.23 Element:** Any electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section or transmission line.

**2.24 Eligible Reviewer:** A person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

**2.25 Expiration Date:** The date on which a TFE expires, as specified in the approved TFE Request or in a Notice of Revocation.

**2.26 Facility:** A set of electrical equipment that operates as a single bulk power system element (e.g., a line, a generator, a shunt compressor, transformer, etc.).

**2.27 FERC:** The United States Federal Energy Regulatory Commission.

**2.28 FOIA:** The U.S. Freedom of Information Act, 5 U.S.C. §552.

**2.29 Hearing Procedures:** Attachment 2 to the NERC and Regional Entity CMEP.

**2.30 Mitigation Plan:** An action plan developed by a Responsible Entity to (i) correct a violation of an Applicable Requirement and (ii) prevent recurrence of the violation.

**2.31 Notice of Revocation:** A notice issued by a Regional Entity or NERC to the Responsible Entity, following a Revocation Investigation, (i) revoking an approved TFE Request prior to its Expiration Date, or (ii) advancing the Expiration Date to an earlier date, or (iii) revising the approved TFE Request to impose different or additional obligations on the Responsible Entity.

**2.32 Notice of Revocation Investigation:** A notice issued by a Regional Entity or NERC to the Responsible Entity, stating the Regional Entity or NERC is initiating a Revocation Investigation.

**2.33 NRC:** The United States Nuclear Regulatory Commission.

**2.34 NRC Safeguards Information:** Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21. [NOTE: This definition will be expanded, or an additional definition added, to include any similar Canadian or provincial requirements.]

**2.35 Protected FOIA Information:** Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)) or any similar state or local statutory provision which would be lost were the Required Information to be placed into

the public domain. [NOTE: This definition will be expanded, or an additional definition added, to include any Canadian or provincial provisions similar to FOIA.]

**2.36 Region:** The geographic boundaries of a Regional Entity.

**2.37 Regional Entity:** The Regional Entity within whose Region the Covered Asset that is the subject of a TFE Request is located.

**2.38 Reliability Coordinator:** A Responsible Entity that is registered in the Compliance Registry for the reliability function of Reliability Coordinator.

**2.39 Responsible Entity:** A user, owner or operator of the bulk power system that is registered in the Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the Applicability section of the CIP Standard.

**2.40 Revocation Investigation:** An investigation initiated and conducted by a Regional Entity or NERC to determine (i) if an approved TFE Request should be revoked before its Expiration Date, (ii) if the Expiration Date should be advanced to an earlier date, or (iii) if the approved TFE Request should be revised to impose different or additional obligations on the Responsible Entity.

**2.41 Required Information:** The information required to be provided in a TFE Request, as specified in Section 4.0 of this Appendix.

**2.42 Rules of Procedure:** The NERC Rules of Procedure.

**2.43 Self Reporting:** A report by a Responsible Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.

**2.44 Senior Manager:** The person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity's implementation of, and adherence to, the CIP Standards.

**2.45 Strict Compliance:** Compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

**2.46 Technical Feasibility Exception or TFE:** An exception from compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in Section 3.0 of this Appendix.

**2.47 TFE Request:** A request submitted by a Responsible Entity in accordance with this Appendix for an exception from Strict Compliance with an Applicable Requirement.

**2.48 Transmission Operator:** A Responsible Entity that is registered in the Compliance Registry for the reliability function of Transmission Operator.

**2.49 Voluminous Information:** Required Information that is too large (in terms of number of pages or electronic file size) to be transmitted, or otherwise incapable of being transmitted completely or clearly, or that could be transmitted only with great difficulty, to a Regional Entity or NERC, such as extremely lengthy documents, oversized plans, drawings or similar documents, photographs of equipment placement or configuration, or extremely large electronic files. Voluminous Information includes the need to view the Covered Asset or the related Facility, any equipment placement or configuration associated with the Covered Asset or related Facility, or the surrounding environment of the Covered Asset or related Facility, in instances where the aspects of the TFE Request cannot be adequately depicted and conveyed in electronic or paper form.

### **3.0. BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION**

**3.1.** A Responsible Entity may request and obtain approval for a TFE when Strict Compliance with an Applicable Requirement, evaluated in the context or environment of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

- (i) is not technically possible or is precluded by technical limitations; or
- (ii) is operationally infeasible or could adversely affect reliability of the bulk power system to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (iii) while technically possible and operationally feasible, cannot be achieved by the date by which the Responsible Entity is required to be in compliance with the Applicable Requirement, due to factors such as scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or
- (iv) would pose safety risks or issues that outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (v) would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or
- (vi) would require the incurrence of costs that far exceed the benefits to the reliability of the bulk power system of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset, the related

Facility and the bulk power system of continuing to operate with the existing equipment can be shown to be minimal.

**3.2.** A TFE does not relieve the Responsible Entity of its obligation to comply with the Applicable Requirement. Rather, a TFE authorizes a departure from Strict Compliance with the Applicable Requirement but requires the Responsible Entity to implement and maintain an alternate approach to achieving compliance with the Applicable Requirement, through the use of compensating measures and/or mitigating measures.

**3.3.** A TFE typically must be requested for, and will be approved only for, a limited duration, until a stated Expiration Date. The Responsible Entity will be expected to achieve Strict Compliance with the Applicable Requirement by the Expiration Date. Under limited, justified circumstances, a TFE Request may be approved without a specified Expiration Date, subject to periodic review to verify continuing justification for the TFE.

#### **4.0. REQUIRED FORM AND CONTENTS OF A TFE REQUEST**

##### **4.1. Separate Submissions for Each TFE Request**

A separate TFE Request shall be submitted for each Applicable Requirement pertaining to each Covered Asset for which the Responsible Entity seeks a TFE. An exception to this requirement is where the Responsible Entity seeks TFEs from the same Applicable Requirement for multiple, similar Covered Assets (either at the same location or different locations) on the same basis, with the same compensating measures and/or mitigating measures, and with similar proposed Expiration Dates, in which case the TFE Requests for all the Covered Assets may be included in one submission.

##### **4.2. Form and Format of TFE Request**

A TFE Request shall consist of two parts:

(i) Part A of the TFE Request is the notification to a Regional Entity that a Registered Entity is requesting a TFE. Part A must be submitted in a secure electronic form using the template provided by the Regional Entity. Regional Entities will use Part A for initial screening for eligibility. NERC will use Part A information to develop its annual, wide-area report to the applicable governmental authorities and to provide oversight to the TFE process.

(ii) Part B of the TFE Request contains the detailed material to support a TFE request and includes the documents, drawings, and other information necessary to provide the details and justification for the requested TFE. Part B must also include a detailed description of the alternative mitigating measures the Registered Entity will use while the TFE is in effect to achieve the purposes of the Reliability Standard. The Registered Entity must develop the Part B material at the same time as Part A. Part B must be available at the Registered Entity's location for review by the Regional Entity and/or NERC during an audit, spot check, or other compliance inquiry. A Regional Entity may

also require that all or a portion of Part B must be filed with the Regional Entity, provided that can be accomplished in a secure manner that does not compromise the confidentiality of the information.

#### **4.3. Required Information to be Included in the TFE Request**

**4.3.1.** Part A of a TFE Request shall contain the Required Part A Information specified by the Regional Entity in the template provided under Section 4.2. Failure to provide all Required Information will result in rejection of the TFE Request as incomplete.

**4.3.2** Part B of a TFE Request shall contain the Required Part B Information specified in this Section 4.3.2. Failure to include all Required Information will result in rejection of the TFE Request as incomplete.

1. A copy of Part A of the TFE Request.
2. Contact information (name, address, phone, facsimile, e-mail) for an employee or other representative of the Responsible Entity designated as principal contact for the TFE Request. The contact information should include information on how a Regional Entity may arrange to review any Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information or Voluminous Information that is part of the TFE Request, or to conduct a physical inspection of the Covered Asset and the related Facility.
3. Location of the Covered Asset for which the TFE is requested, including the Region in which the Covered Asset is located.
4. Applicable Requirement that is the subject of the TFE Request.
5. Narrative discussion and analysis of the basis, consistent with Section 3.0 of this Appendix, on which the Responsible Entity contends the TFE Request should be approved, with supporting documentation. Without limiting the content of this narrative discussion and analysis, it must include:
  - (i) a description of the specific equipment, process or procedure at or associated with the Covered Asset and subject to or required by the Applicable Requirement, for which the TFE is requested;
  - (ii) an explanation and demonstration of why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement;
  - (iii) a discussion of approaches the Responsible Entity considered or evaluated for achieving Strict Compliance with the Applicable Requirement and why these approaches were determined to be unachievable or infeasible;

(iv) a discussion and analysis of the impact on reliable operation of the Covered Asset and the related Facility if Strict Compliance with the Applicable Requirement is not achieved, including any vulnerabilities resulting from lack of Strict Compliance; and

(v) a discussion and analysis of the impact on reliable operation of the bulk power system if Strict Compliance with the Applicable Requirement is not achieved, including any vulnerabilities resulting from lack of Strict Compliance.

6. Narrative discussion and analysis of the compensating measures and/or mitigating measures the Responsible Entity proposes to implement and maintain as an alternate approach to achieving Strict Compliance with the Applicable Requirement, with supporting documentation. Without limiting the content of this narrative discussion and analysis, it must include discussion and analysis of how, and the extent to which, the proposed compensating measures and/or mitigating measures will reduce or prevent any adverse impacts on (i) the reliable operation of the Covered Asset and the related Facility and (ii) the reliable operation of the bulk power system, resulting from the failure to achieve Strict Compliance with the Applicable Requirement, including reducing or eliminating any vulnerabilities resulting from lack of Strict Compliance.
7. If the TFE Request is supported, in whole or in part, by Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and/or Voluminous Information, a statement identifying which of these categories each such item of information falls into and explaining why each such item of information is Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and/or Voluminous Information. If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), the TFE Request shall identify the Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is subject to such restrictions on disclosure and shall identify the criteria which a person must meet in order to be an Eligible Reviewer of the Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information.
8. The Responsible Entity's proposed time schedule(s) for implementing the proposed compensating measures and/or mitigating measures. The TFE Request may identify compensating measures and or mitigating measures that have already been implemented by the Responsible Entity. The proposed time schedule shall include a proposed schedule for reporting to the Regional Entity on

the Responsible Entity's progress in implementing the compensating measures and/or mitigating measures.<sup>3</sup>

9. The Responsible Entity's proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement, including the Responsible Entity's proposed Expiration Date. The Responsible Entity should either (i) describe the specific steps it plans to take to achieve Strict Compliance and the planned schedule for each step, including the date by which the Responsible Entity intends to achieve Strict Compliance with the Applicable Requirement, and/or (ii) describe the specific research, design, analytical, testing or other activities the Responsible Entity intends to engage in to determine a means of achieving Strict Compliance with the Applicable Requirement, and the Responsible Entity's proposed time schedule for these activities. The proposed time schedule shall include a proposed schedule for submitting reports on the Responsible Entity's progress in implementing the steps to achieve Strict Compliance and/or in carrying out the research, design, analytical, testing or other activities to determine a means to achieve Strict Compliance.<sup>4</sup>
10. If the Responsible Entity contends it will not be possible for it to achieve Strict Compliance with the Applicable Requirement and that the TFE being requested should have no Expiration Date, an explanation and justification as to why it will not be possible for the Responsible Entity to achieve Strict Compliance with the Applicable Requirement by a specified Expiration Date, why the TFE Request should be approved with no Expiration Date, and under what conditions, if any, the Responsible Entity will be able to achieve Strict Compliance with the Applicable Requirement at a future unknown and unspecified date.
11. If the proposed Expiration Date is more than one year from the date the TFE Request is submitted, the Responsible Entity's proposed schedule for submitting reports to the Regional Entity on the continued need for and justification for the TFE.<sup>5</sup> The proposed reporting schedule shall provide for the submission of such reports on at least an annual basis. If the Responsible Entity proposes an Expiration Date for the TFE, the proposed reporting schedule shall cover the entire period until the Expiration Date.
12. A statement, signed and dated by the Senior Manager, that the Senior Manager has read the TFE Request and understands all the components of the TFE

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<sup>3</sup> The proposed reporting schedule for item 8 may be combined with the proposed reporting schedules for items 9 and 11.

<sup>4</sup> The proposed reporting schedule for item 9 may be combined with the proposed reporting schedule for items 8 and 11.

<sup>5</sup> The proposed reporting schedule for item 11 may be combined with the proposed reporting schedule for items 8 and 9.

Request, and on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria in Section 3.0 of this Appendix.

**4.3.2.** Schedule dates, implementation dates, reporting dates and the Expiration Date in the TFE Request may be stated as specific calendar dates, as dates occurring a specified number of days following approval of the TFE Request by the Regional Entity, or as dates occurring a specified number of days following the occurrence of a specified event or events.

**4.3.3.** With respect to items 5(v) and 6(ii), it is recognized that these discussions and analyses may require information and analyses from other entities that the individual Responsible Entity is unable to secure. The TFE Request should describe any limitations on the Responsible Entity's ability to provide a comprehensive discussion and analysis of the impacts on reliable operation of the bulk power system (i) if Strict Compliance with the Applicable Requirement is not achieved and (ii) of the implementation of the proposed compensating measures and mitigating measures.

#### **4.4 Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information Included in Required Information**

**4.4.1.** Upon reasonable advance notice from a Regional Entity or NERC, and subject to Section 4.4.2, the Responsible Entity must provide the Regional Entity or NERC (i) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information included in the Required Information but not provided in the TFE Request, and (ii) with access to the Covered Asset and the related Facility for purpose of making a physical review and inspection. The Regional Entity or NERC is not limited in the number of times it may review such Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information or may conduct a physical review and inspection of the Covered Asset and the related Facility, for purposes of determining if the TFE Request should be approved.

**4.4.2.** If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall only be reviewed by a representatives or representatives of the Regional Entity or NERC (which may include contractors) who are Eligible Reviewers.

## **5.0 REVIEW OF TFE REQUESTS**

### **5.1 Initial Screening of TFE Request for Acceptance**

**5.1.1.** Upon receipt of a TFE Request, the Regional Entity (i) will assign a unique identifier to the TFE Request, and (ii) will review the TFE Request to determine that the TFE Request is for an Applicable Requirement and that all Required Information for Part A of the request has been provided.

**5.1.2.** The unique identifier assigned to the TFE Request will be in the form of XXXX-YYYY-ZZZZ, where “XXXX” is the year in which the TFE Request is received by the Regional Entity (*e.g.*, “2009”); “YYY” is the acronym for the Regional Entity in whose Region the Covered Asset is located<sup>6</sup>; and “ZZZZ” is the sequential number of the TFE Request received by the Regional Entity for Covered Assets in that Region in that year (*e.g.*, the first TFE Request received for a Covered Asset in a Region in a year will be “0001” and the two-hundredth TFE Request received for a Covered Asset in that Region in that year will be “0200”).

**5.1.3.** The Regional Entity shall complete its initial screening within 60 days of receiving the TFE notice. If the Regional Entity determines the TFE Request is for an Applicable Requirement and contains all Required Part A Information, the Regional Entity shall send a notice to the Responsible Entity and to NERC accepting the TFE Request as complete.

**5.1.4.** If the Regional Entity determines the TFE Request is (i) not for an Applicable Requirement, or (ii) does not contain all Required Part A Information, the Regional Entity shall send a notice to the Responsible Entity and to NERC rejecting the TFE Request. If the Regional Entity rejects the TFE Request because not all Required Part A Information was provided, the Regional Entity’s notice shall identify the Required Information that was not provided in the TFE Request. The Responsible Entity may then resubmit the TFE Request with all Required Information included within 30 days of the notice of rejection.

## **5.2 Substantive Review of TFE Request for Approval or Disapproval**

**5.2.1** The Regional Entity shall conduct a substantive review of an accepted TFE Request to determine if it should be approved in accordance with Section 3.0 of this Appendix, or disapproved. The Regional Entity will conduct the substantive review in accordance with established NERC and Regional Entity processes (audit, spot check, special TFE review). As part of its substantive review, the Regional Entity may request access to and review any Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information that is necessary to support the TFE Request; may conduct one or more physical inspections of the Covered Asset and the related Facility; may request additional information from the Responsible Entity; and may engage in discussions with the Responsible Entity concerning possible revisions to the TFE Request.

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<sup>6</sup> The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Regional Entity); WECC (Western Electricity Coordinating Council); and NERC (applicable where NERC, rather than a Regional Entity, is the Compliance Enforcement Authority for the Responsible Entity).

**5.2.2.** As part of its review of the TFE Request, the Regional Entity shall perform a wide-area analysis of the impact of the Responsible Entity’s operation pursuant to the requested TFE, if approved, including the proposed compensating factors and/or mitigating factors, on the reliable operation of the bulk power system within the applicable Region or such geographic area as the Regional Entity deems appropriate. In conducting this wide-area analysis, the Regional Entity shall seek such information from, and collaborate in conducting such studies with NERC, one or more other Regional Entities and other Responsible Entities (such as Reliability Coordinators, Balancing Authorities and Transmission Operators) as the Regional Entity deems necessary and appropriate to evaluate the wide area impact of the requested TFE, and shall take into account the numbers and types of TFEs that have been previously approved and are in effect within the geographic area the Regional Entity deems appropriate for the analysis.

**5.2.3.** The Regional Entity shall conduct a thorough review of the TFE Request, review mitigating measures, and prepare its justification for approval or denial of the TFE within one year of the initial submittal of the TFE Request, unless otherwise extended by the Regional Entity for good cause shown, with concurrence by NERC.

**5.2.4.** If the Regional Entity approves the TFE Request, the Regional Entity shall provide notice to NERC of the approval and NERC will have 30 calendar days from the date NERC receives the notice to confirm the Regional Entity’s approval or reject the TFE with detailed justification. The notice shall state the basis under Section 3.0 of this Appendix on which the Regional Entity determined the TFE Request should be approved, and shall state the Expiration Date, and all implementation dates and reporting dates, in the approved TFE Request. The Regional Entity shall notify the Registered Entity of NERC’s action either way.

**5.2.5.** If the Regional Entity disapproves the TFE Request, the Regional Entity shall issue a notice to the Responsible Entity and to NERC stating the reasons it has disapproved the TFE Request. In its notice disapproving a TFE Request, the Regional Entity may, but is not required to, state revisions to the TFE Request that, if made by the Responsible Entity, would result in approval of the TFE Request. If the Responsible Entity submits a revised TFE Request to the Regional Entity incorporating the revisions to the TFE Request set forth in the notice of disapproval, then the Regional Entity shall issue a revised notice, in accordance with Section 5.2.4, canceling the notice of disapproval and approving the revised TFE Request.

**5.2.6.** A notice disapproving a TFE Request shall state an Effective Date, which shall be no earlier than the thirty-first day following the date of the notice. During the period from the date of the notice to the Effective Date, the Responsible Entity shall either (i) submit to the Regional Entity a Mitigation Plan for achieving Strict Compliance with the Applicable Requirement, or (ii) submit a revised TFE Request in accordance with Section 5.2.5, if applicable. If the Responsible Entity submits a Mitigation Plan, it shall be processed by the Regional Entity, and implemented by the Responsible Entity, in accordance with Section 6.0 of the CMEP.

**5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request is Being Reviewed**

The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE Request, for the period from the date of the Regional Entity’s notice that the TFE Request is accepted as complete, to (i) the date of the Regional Entity’s notice that the TFE Request is approved or (ii) the Effective Date of the Regional Entity’s notice that the TFE Request is disapproved, whichever is applicable.

#### **5.4 Registry of Approved TFE Requests**

**5.4.1.** NERC shall maintain a non-public registry of TFE Requests that have been approved. The registry shall list, for each approved TFE Request:

- (i) the unique identifier assigned to the TFE Request;
- (ii) the name of the Responsible Entity;
- (iii) the location of the Covered Asset;
- (iv) the Applicable Requirement (*e.g.*, CIP-005-1 Requirement R2.4);
- (v) the date the TFE Request was approved by the Regional Entity;
- (vi) the date(s) any amendment(s) to the TFE Request was/were approved;
- (vii) the date of the most recent report filed by the Responsible Entity with respect to the TFE;
- (viii) the date(s) and Effective Date(s) of any Notice(s) of Revocation issued by the Regional Entity or NERC; and
- (ix) the Expiration Date.

**5.4.2.** Upon the Expiration Date or revocation of a TFE, it shall be marked in the registry as “expired” or “revoked”, as applicable.

### **6.0 IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE REQUEST**

**6.1.** The Responsible Entity will be required to implement compensating measures and/or mitigating measures as described, and in accordance with the time schedule(s) set forth, in the approved TFE Request.

**6.2.** The Responsible Entity will be required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirements and eliminating

the TFE, as described, and in accordance with the time schedule(s) set forth, in the approved TFE Request.

**6.3.** The Responsible Entity will be required to submit timely periodic and other reports as specified in the approved TFE Request. The reports that the Responsible Entity may be required to submit include: (i) reports to the applicable Regional Entity on the Responsible Entity's progress in implementing and maintaining the compensating measures and/or mitigating measures the Responsible Entity is adopting pursuant to the approved TFE Request; (ii) reports to the applicable Regional Entity on the Responsible Entity's progress in implementing steps and/or conducting research and/or analysis to achieve Strict Compliance with the Applicable Requirement; and (iii) periodic reports to the Regional Entity, which shall be submitted at least annually following approval of the TFE Request, supporting the continued justification for the approved TFE.

**6.4.** All reports shall be submitted by the dates or in accordance with the time schedule specified in the approved TFE Request, and shall conform to the form and content requirements specified in the approved TFE Request. Each report shall include a statement, signed and dated by the Senior Manager, that the Senior Manager has read, and understands the contents of, the report.

**6.5.** Where a Responsible Entity's report shows that the Responsible Entity (i) has completed a step in implementing compensating measures or mitigating measures, or (ii) has failed to implement a compensating measure or a mitigating measure in accordance with the time schedule set forth in the approved TFE Request, or (iii) has failed to maintain a previously-implemented compensating measure or mitigating measure, and such development represents a material change in the information, assumptions or parameters used in the wide-area analysis conducted by the NERC pursuant to Section 5.2.2 of this Appendix, then NERC shall conduct a revised wide-area analysis using the changed information, assumptions or parameters.

**6.6.** If a Responsible Entity fails to submit a report by the date or in accordance with the time schedule specified in the approved TFE Request, or submits a report that does not conform to the form and content requirements specified in the approved TFE Request, the Regional Entity may initiate a Revocation Investigation for the purpose of determining if the approved TFE Request should be revoked prior to its Expiration Date, if the Expiration Date should be advanced to an earlier date, or if the approved TFE Request should be revised to impose additional or different requirements on the Responsible Entity.

**6.7.** If a report submitted by a Responsible Entity shows that the Responsible Entity is failing to implement or maintain compensating measures or mitigating measures in accordance with the schedule set forth in the approved TFE Request, or that the Responsible Entity is failing to implement steps and/or conduct research or analyses to achieve Strict Compliance with the Applicable Requirement in accordance with the time schedule set forth in the approved TFE Request, the Regional Entity or NERC (i) may initiate a Compliance Violation Investigation for the purpose of determining if a notice of Alleged Violation should be issued to the Responsible Entity, and (ii) may initiate a Revocation Investigation for the purpose of determining if the approved TFE should be revoked prior to its Expiration Date, if the Expiration Date should be

advanced to an earlier date, or if the approved TFE should be revised to impose additional or different requirements on the Responsible Entity. The failure of a Responsible Entity to implement or maintain compensating measures or mitigating measures, or to implement steps and/or conduct research or analyses to achieve Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE Request, may be treated by the Compliance Enforcement Authority as an Alleged Violation and processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

**6.8.** The Responsible Entity shall Self Report any failure to implement or maintain compensating measures or mitigating measures in accordance with the schedule set forth in the approved TFE Request, and any failure to implement steps and/or conduct research or analyses to achieve Strict Compliance with the Applicable Requirement in accordance with the time schedule set forth in the approved TFE Request, pursuant to the Self Reporting provisions of the CMEP.

**6.9.** The Responsible Entity's annual or other periodic report supporting the continued justification for the approved TFE shall contain information as specified in items 1 through 10 and 12 of Section 4.3.1, but revised as appropriate based on current information as of the date of the annual report. The annual or other periodic report shall not propose revisions to implementation, research and reporting dates that were specified in the approved TFE Request, but rather shall report on the Responsible Entity's progress and accomplishments in carrying out the implementation and research activities. Any revisions to implementation, research and reporting dates, or to other requirements, that were specified in the approved TFE Request shall be requested by an amendment filing in accordance with Section 7.2 of this Appendix.

**6.10.** The Regional Entity shall issue an acknowledgement notice to the Responsible Entity and to NERC that the periodic or other report has been received, but no other issuances shall be required from the Regional Entity in response to submission of such a report. The TFE shall continue in effect until its Expiration Date, in accordance with the terms of the approved TFE Request, unless and until the Regional Entity issues a Notice of Revocation following a Revocation Investigation conducted pursuant to Section 9.0 of this Appendix.

**6.11.** At least 30 days prior to the Expiration Date, the Responsible Entity shall submit a report to the Regional Entity, signed and dated by the Senior Manager, demonstrating that the Responsible Entity has achieved, or will be able to achieve by the Expiration Date, Strict Compliance with the Applicable Requirement.

## **7.0 AMENDMENT OF A TFE REQUEST**

### **7.1 Amendment of a Pending TFE Request**

A Responsible Entity may at any time amend a pending TFE Request that is under review by a Regional Entity, for the purpose of providing additional or revised Required Information. The Responsible Entity may resubmit the entire TFE Request, as amended, or only the portion of the TFE Request that is being amended, if it is easily separable. The Responsible Entity shall

include a narrative explanation of what Required Information is being added or revised and the purpose of the amendment.

## **7.2. Amendment of an Approved TFE Request**

**7.2.1.** A Responsible Entity may submit to the Regional Entity that approved the TFE Request an amendment to an approved TFE Request for the purpose of requesting revision to any of the requirements specified in the approved TFE Request, such as for example revisions to the specific compensating measures and/or mitigating measures to be implemented, an extension of the schedule for implementing the compensating measures and/or mitigating measures, or an extension of the Expiration Date. The Responsible Entity shall submit all the Required Information specified in Section 4.3.1, provided, that if any of the items of Required Information submitted in the original TFE Request (or in any previous amendment) are unaffected by the amendment, the Responsible Entity may so state and submit only the items of Required Information that are affected by the amendment. The Responsible Entity shall include a narrative explanation of the amendment, the reason and purpose of the amendment, and the reason the requirements in the approved TFE Request, for which amendment is requested, cannot be met.

**7.2.2.** The Regional Entity shall review the amendment filing in accordance with Section 5.1 of this Appendix to determine if it is complete, and shall issue a notice to the Responsible Entity and to NERC stating if the amendment filing is accepted as complete or rejected as incomplete. If the Regional Entity issues a notice that the amendment filing is accepted as complete, the Regional Entity shall conduct a substantive review of the amendment to determine if it should be approved or disapproved, in accordance with Section 5.2 of this Appendix. If the Regional Entity determines the amendment should be approved, the TFE Request as amended replaces the previously approved TFE Request.

**7.2.3.** An approved TFE Request that is the subject of an amendment filing remains in effect unless and until the amendment is approved by the Regional Entity.

## **8.0 COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE**

**8.1.** Following approval of a Responsible Entity's TFE Request, subsequent Compliance Audits of the Responsible Entity conducted prior to the Expiration Date shall include audit of (i) the Responsible Entity's implementation and maintenance of the compensating measures and/or mitigating measures specified in the approved TFE Request, in accordance with the time schedule(s) set forth in the approved TFE Request, and (ii) the Responsible Entity's implementation of steps and conduct of research and analyses towards achieving Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE Request. These topics shall be included in such Compliance Audits regardless of whether a Compliance Audit was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

**8.2** The first Compliance Audit of the Responsible Entity subsequent to the Expiration Date shall include audit of the Responsible Entity's Strict Compliance with the Applicable Requirement. This topic shall be included in such Compliance Audit regardless of whether it was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

## **9.0 REVOCATION OF AN APPROVED TFE REQUEST**

**9.1.** A Regional Entity or NERC may initiate a Revocation Investigation to determine if an approved TFE Request should be revoked prior to its Expiration Date, if the Expiration Date should be advanced to an earlier date, or if the approved TFE Request should be revised to impose additional or different requirements on the Responsible Entity, if:

- (i) the Responsible Entity fails to make a timely submission of a report as specified in the approved TFE Request; or
- (ii) a report submitted by the Responsible Entity pursuant to the approved TFE Request does not conform to the form and content requirements for such report as specified in the approved TFE Request; or
- (iii) the Regional Entity or NERC obtains information indicating that the Responsible Entity is failing to implement and maintain compensating measures and/or mitigating measures as specified in the approved TFE Request or in accordance with the time schedule(s) set forth in the approved TFE Request; or
- (iv) the Regional Entity or NERC obtains information indicating that the Responsible Entity is failing to implement steps or conduct research or analyses towards achieving Strict Compliance with the Applicable Requirement as specified in the approved TFE Request or in accordance with the time schedule(s) set forth in the approved TFE Request; or
- (v) the Regional Entity or NERC obtains information indicating that the TFE is no longer necessary in accordance with Section 3.0 of this Appendix or that the Expiration Date should be advanced to an earlier date.

**9.2** The Regional Entity or NERC shall initiate a Revocation Investigation by issuing a Notice of Revocation Investigation to the Responsible Entity. The Notice of Revocation Investigation shall state: (i) the basis for the Revocation Investigation, in accordance with Section 9.1, including copies of any documents on which the Regional Entity or NERC relied in determining that the Revocation Investigation should be initiated; (ii) a date (which shall not be less than 30 days from the date of the Notice of Revocation Investigation) by which the Responsible Entity is required to submit a response demonstrating that the approved TFE should not be revoked or the Expiration Date should not be advanced; and (iii) any initial requests for documents or information by the Regional Entity or NERC, with a response date which shall not be less than 30 days from the date of the Notice of Revocation Investigation. The Regional Entity and NERC shall each notify the other of actions taken under Section 9.0.

**9.3.** During the course of the Revocation Investigation, the Regional Entity or NERC may request additional documents and information from the Responsible Entity and may conduct physical inspections of the Covered Asset and the related Facility.

**9.4.** Any Revocation Investigation shall include an opportunity for the Responsible Entity to submit documents, information and argument to show, as applicable, why the approved TFE should not be revoked prior to its Expiration Date, why the Expiration Date should not be advanced to an earlier date, or why the approved TFE should not be revised to impose different or additional obligations on the Responsible Entity. Before issuing a Notice of Revocation, the Regional Entity or NERC shall issue a proposed Notice of Revocation to the Responsible Entity. The Responsible Entity shall be allowed a time period of not less than seven days from the date the proposed Notice of Revocation is issued to submit comments to the Regional Entity or NERC concerning the proposed Notice of Revocation.

**9.5.** Any Notice of Revocation issued by the Regional Entity or NERC shall state (i) the specific revocation action determined by the Regional Entity or NERC (i.e., that the approved TFE is being revoked, that the Expiration Date is being advanced to a stated earlier date, and/or that the approved TFE is being revised to impose different or additional requirements on the Responsible Entity), (ii) the basis for the Notice of Revocation, and (iii) the Effective Date of the Notice of Revocation, which shall be no earlier than the thirty-first day following the date of the Revocation Notice.

**9.6.** During the period from the date of the Notice of Revocation to the Effective Date, the Responsible Entity shall submit to the Regional Entity a Mitigation Plan for achieving Strict Compliance with the Applicable Requirement. The Mitigation Plan shall be processed by the Regional Entity, and implemented by the Responsible Entity, in accordance with Section 6.0 of the CMEP.

## **10.0 HEARINGS AND APPEALS PROCESS FOR RESPONSIBLE ENTITY**

A Responsible Entity that disputes (i) a rejection or disapproval of a TFE Request, (ii) a rejection or disapproval of a proposed amendment to an approved TFE Requests, or (iii) a Revocation Notice, may request a hearing before the hearing body of the Regional Entity or the CCC, depending upon whether the Regional Entity or NERC has taken the action being disputed. The hearing shall be conducted and a decision rendered by the Regional Entity in accordance with the Regional Entity's rules, or by the CCC in accordance with the procedures specified in Section 409 of the Rules of Procedure and the rules of the CCC. The Responsible Entity may appeal an adverse final order of the Regional Entity or the CCC, and the appeal shall be heard and decided by the BOTCC, in accordance with Sections 409 or 410 of the Rules of Procedure, as appropriate.

## **11.0 CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION**

**11.1.** Except as expressly stated in this Section 11.0, the submission, review, acceptance/rejection, approval/disapproval, and implementation of TFE Requests shall be maintained as confidential. The following documents are Confidential Information and shall be treated as such in accordance with Section 1500 of the Rules of Procedure:

- (i) All TFE Requests and proposed amendments;
- (ii) All notices (including Notices of Revocation) issued by a Regional Entity or NERC pursuant to this Appendix;
- (iii) All requests for documents or information made by a Regional Entity or NERC pursuant to this Appendix;
- (iv) All submissions of documents and information by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;
- (v) All post-approval reports submitted by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;
- (vi) The registry of approved TFE Requests maintained by NERC and the lists of approved TFEs maintained by the Regional Entities;
- (vii) All wide-area analyses prepared by NERC and the Regional Entities pursuant to this Appendix;
- (viii) All correspondence, notes, drawings, drafts, work papers, electronic communications, reports and other documents generated by a Regional Entity or NERC in connection with a TFE Request, including (without limiting the scope of this provision) in connection with reviewing a TFE Request and supporting documents and information submitted by the Responsible Entity, conducting a physical inspection of the Covered Asset or the related Facility, reviewing and analyzing post-approval reports submitted by a Responsible Entity, or conducting Revocation Investigations.

**11.2.** The Annual Report to be submitted by NERC pursuant to Section 12.0 shall be filed with Applicable Governmental Authorities on a public basis and shall not be considered Confidential Information. NERC shall prepare the Annual Report in such a manner that no Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information is disclosed in the Annual Report.

**11.3.** A Responsible Entity may need to rely on Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to support and justify a TFE Request or proposed amendment or to respond to a Revocation Investigation. Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information may be omitted from a TFE Request, an amendment filing, or a submission in a Revocation Investigation, as submitted to a

Regional Entity, and instead made available for review by the Regional Entity at the Responsible Entity's offices, the location of the Covered Asset, or other appropriate location, in accordance with Section 4.4 of this Appendix. The Regional Entity will work cooperatively with a Responsible Entity to access Protected FOIA Information in such a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure under the FOIA. However, the inability of the Regional Entity to access and review information, including Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information, that is necessary to determine if a TFE Request or proposed amendment should be accepted/approved in accordance with Section 3.0 of this Appendix, or a Notice of Revocation should be issued, may result in rejection/disapproval of the TFE Request or proposed amendment or in issuance of the Notice of Revocation.

## **12.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES**

### **12.1. Contents of Annual Report**

NERC shall submit an Annual Report to FERC that provides a wide-area analysis or analyses regarding the use of the TFE and the impact on the reliability of the bulk power system, as required by Paragraphs 220 and 221 of Order No. 706, which state:

. . . [W]e direct the ERO to submit an annual report to the Commission that provides a wide-area analysis regarding use of the technical feasibility exception and the effect on Bulk-Power System reliability. The annual report must address, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception. . . [T]he report should contain aggregated data with sufficient detail for the Commission to understand the frequency with which specific provisions are being invoked as well as high level data regarding mitigation and remediation plans over time and by region . . . .

Copies of the Annual Report shall be filed with other Applicable Governmental Authorities. The Annual Report shall contain, at a minimum, the following information:

- (i) The frequency of use of the TFE Request process, disaggregated by Region and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, including (A) the numbers of TFE Requests that have been submitted, accepted/rejected, and approved/disapproved during the preceding year and cumulatively since the effective date of this Appendix, (B) the number of approved TFE Requests that are still in effect as of on or about the date of the annual report; (C) the numbers of TFE that reached their Expiration Dates or were revoked during the preceding year; and (D) the number of TFE that are scheduled to reach their Expiration Dates during the ensuing year;

- (ii) Categorization of the submitted and approved TFE Requests to date by broad categories such as the general nature of the TFE Request and the Applicable Requirements covered by submitted and approved TFE Requests;
- (iii) Categorization of the circumstances or justifications on which the approved TFE Requests to date were submitted and approved, by broad categories such as the need to avoid replacing existing equipment with significant remaining useful lives, unavailability of suitable equipment to achieve Strict Compliance in a timely manner, or conflicts with other statutory and regulation requirements applicable to the Responsible Entity;
- (iv) Categorization of the compensating measures and mitigating measures implemented and maintained by Responsible Entities pursuant to approved TFE Requests, by broad categories of compensating measures and mitigating measures;
- (v) A discussion, on an aggregated basis, of Compliance Audit results and findings concerning the implementation and maintenance of compensating measures and mitigating measures, and the implementation of steps and the conduct of research and analyses to achieve Strict Compliance with the Applicable Requirements, by Responsible Entities in accordance with approved TFE Requests;
- (vi) Assessments, by Region (and for more discrete areas within a Region, if appropriate) and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, of the impacts on the reliability of the bulk power system of approved TFE Requests; and
- (vii) Discussion of efforts to eliminate future reliance on TFE.

### **12.2. Due Date for Annual Reports**

The first Annual Report shall be filed with FERC and with other Applicable Governmental Authorities no later than the last day of the fourth calendar quarter ending after the effective date of this Appendix. Subsequent Annual Reports shall be filed no later than the last day of the same calendar quarter in each succeeding year.

### **12.3. Annual Report to be a Public Document**

The Annual Report shall be a public document. Therefore, NERC shall prepare the annual report in such a manner that it does not include or disclose any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information.

### **12.4. Responsible Entities Must Cooperate in Preparation of Annual Report**

As specified in Paragraph 220, note 74 of Order No. 706, Responsible Entities must cooperate with NERC and in providing information deemed necessary for NERC to fulfill its reporting obligations to FERC.

Redline of Procedure for Requesting and Receiving  
Technical Feasibility Exceptions to NERC Critical  
Infrastructure Protection Standards, Appendix 4D to  
the Rules of Procedure, Version 1 to Version 0,  
Posted on March 16, 2009

FOR COMMENT  
Revisions to 3-16-09 Posting

**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**APPENDIX 4D TO THE RULES OF PROCEDURE**

**Version 1**

**[Month, Day] 2009**

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**PROCEDURE FOR REQUESTING AND RECEIVING  
TECHNICAL FEASIBILITY EXCEPTIONS  
TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

**1.0 INTRODUCTION**

**1.1. Purpose**

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation (NERC) provides the procedure by which a Responsible Entity may request and receive an exception from compliance with the terms of a Requirement of certain NERC Critical Infrastructure Protection (CIP) Standards on the grounds of technical feasibility or technical limitations, where the text of the Requirement provides for deviation from compliance with its terms on such grounds. Such an exception is referred to in this Appendix as a Technical Feasibility Exception or TFE. This Appendix is intended to implement the authorization granted by FERC to allow such exceptions to Requirements of CIP Standards.<sup>1</sup>

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**1.2. Authority**

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. As such, this Appendix has been approved by (i) the NERC Board of Trustees and (ii) FERC. Any future revisions to this Appendix must be adopted in accordance with Article XI, section 2 of the NERC Bylaws and Section 1400 of the NERC Rules of Procedure, including approval by the NERC Board of Trustees and by FERC, in order to become effective.

**1.3. Scope**

This procedure for requesting and obtaining approval of TFEs is applicable only to those Requirements of CIP Standards CIP-002 through CIP-009 that expressly provide either (i) that compliance with the terms of the Requirement is required where or as technically feasible, or (i) that technical limitations may preclude compliance with the terms of the Requirement. As of the effective date of Version 1 of this Appendix, the Applicable Requirements are the following:

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CIP-005-1: R2.4, R2.6, R3.1 and R3.2

CIP-006-1: R1.1

CIP-007-1: R2.3, R 3.2, R4, R 4.1, R5.3, R 5.3.1, R 5.3.2, R 5.3.3, R6 and R6.3

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Subsequent versions of these Requirements will also be eligible for TFEs if they continue to expressly provide either (i) that compliance with their terms is required where or as technically feasible or (ii) that technical limitations may preclude compliance with the terms of the Requirement.<sup>2</sup> Other Requirements of CIP Standards may become Applicable Requirements as

<sup>1</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, 122 FERC ¶ 61,040 (2008) (Order No. 706), at PP 157-222.

<sup>2</sup> Order No. 706 at P 157 and note 65 and P 178.

the result of revisions to the CIP Standards in accordance with the NERC Bylaws and Rules of Procedure including Appendix 3A, *Reliability Standards Development Procedure*.

## 2.0. DEFINITIONS

For purposes of this Appendix, the following terms shall have the following meanings.

**2.1 Alleged Violation:** A potential violation of an Applicable Requirement for which the Compliance Enforcement Authority has determined that evidence exists to indicate a Responsible Entity has violated an Applicable Requirement.

**2.2 Annual Report:** The annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 12.0 of this Appendix.

**2.3 Applicable Governmental Authority:** FERC within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability in Canada and Mexico.

**2.4 Applicable Requirement:** A Requirement of a CIP Standard that expressly provides either (i) that compliance with the terms of the Requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the Requirement.

**2.5 Balancing Authority:** A Responsible Entity that is registered in the Compliance Registry for the reliability function of Balancing Authority.

**2.6 BOTCC:** The Compliance Committee of the NERC Board of Trustees.

| 2.7. CCC: The NERC Compliance and Certification Committee.

| 2.8 CIP Standard: Any of NERC Standards CIP-002 through CIP-009.

| 2.9 Classified National Security Information: Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35. [NOTE: This definition will be expanded, or an additional definition added, to include any similar Canadian or provincial requirements.]

| 2.10 Compliance Audit: A systematic, objective review and examination of records and activities to determine whether a Responsible Entity meets the requirements of applicable Reliability Standards, conducted in accordance with the NERC or approved Regional Entity CMEP.

| 2.11 Compliance Enforcement Authority: NERC or a Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards.

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As defined by the Regional Entity, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.¶

| **2.12 Compliance Monitoring and Enforcement Program or CMEP:** The Compliance Monitoring and Enforcement Program of NERC (Appendix 4C to the NERC Rules of Procedure) or the approved program of a Regional Entity, as applicable.

| **2.13 Compliance Violation Investigation:** A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred, conducted in accordance with the CMEP.

| **2.14 Compliance Registry:** A list, pursuant to Section 500 of the NERC Rules of Procedure and the NERC *Statement of Compliance Registry Criteria* of the owners, operators or users of the bulk power system or the entities registered as their designees for purposes of compliance that perform one or more functions in support of reliability of the bulk power system. The Compliance Registry is used to determine the Reliability Standards applicable to the Responsible Entity.

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| **2.15 Confidential Information:** (i) Confidential business and market information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) cybersecurity incident information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) and other information that is designated as Confidential Information in Section 11.0 of this Appendix.

| **2.16 Covered Asset:** A Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

| **2.17 Critical Assets:** Facilities, systems and equipment which, if destroyed, degraded or otherwise rendered unavailable, would affect the reliability or operability of the bulk power system.

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| **2.18 Critical Infrastructure:** Existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

| **2.19 Critical Cyber Assets:** Cyber Assets essential to the reliable operation of Critical Assets.

| **2.20 Critical Energy Infrastructure Information:** Specific engineering, vulnerability, or detailed design information about proposed or existing Critical Infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on Critical Infrastructure; and (iii) does not simply give the location of the Critical Infrastructure.

| **2.21 Cyber Assets:** Programmable electronic devices and communications networks including hardware, software and data.

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| **2.22 Effective Date:** The date, as specified in a notice disapproving a TFE Request or a Notice of Revocation, on which the disapproval or revocation becomes effective, and which shall be no earlier than the thirty-first day following the date of the notice.

| **2.23 Element:** Any electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section or transmission line.

| **2.24 Eligible Reviewer:** A person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

| **2.25 Expiration Date:** The date on which a TFE expires, as specified in the approved TFE Request or in a Notice of Revocation.

| **2.26 Facility:** A set of electrical equipment that operates as a single bulk power system element (e.g., a line, a generator, a shunt compressor, transformer, etc.).

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| **2.27 FERC:** The United States Federal Energy Regulatory Commission.

| **2.28 FOIA:** The U.S. Freedom of Information Act, 5 U.S.C. §552.

| **2.29 Hearing Procedures:** Attachment 2 to the NERC and Regional Entity CMEP.

| **2.30 Mitigation Plan:** An action plan developed by a Responsible Entity to (i) correct a violation of an Applicable Requirement and (ii) prevent recurrence of the violation.

| **2.31 Notice of Revocation:** A notice issued by a Regional Entity or NERC to the Responsible Entity, following a Revocation Investigation, (i) revoking an approved TFE Request prior to its Expiration Date, or (ii) advancing the Expiration Date to an earlier date, or (iii) revising the approved TFE Request to impose different or additional obligations on the Responsible Entity.

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| **2.32 Notice of Revocation Investigation:** A notice issued by a Regional Entity or NERC to the Responsible Entity, stating the Regional Entity or NERC is initiating a Revocation Investigation.

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| **2.33 NRC:** The United States Nuclear Regulatory Commission.

| **2.34 NRC Safeguards Information:** Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21. [NOTE: This definition will be expanded, or an additional definition added, to include any similar Canadian or provincial requirements.]

| **2.35 Protected FOIA Information:** Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)) or any similar state or local statutory provision which would be lost were the Required Information to be placed into

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the public domain. [NOTE: This definition will be expanded, or an additional definition added, to include any Canadian or provincial provisions similar to FOIA.]

| **2.36 Region:** The geographic boundaries of a Regional Entity.

| **2.37 Regional Entity:** The Regional Entity within whose Region the Covered Asset that is the subject of a TFE Request is located.

| **2.38 Reliability Coordinator:** A Responsible Entity that is registered in the Compliance Registry for the reliability function of Reliability Coordinator.

| **2.39 Responsible Entity:** A user, owner or operator of the bulk power system that is registered in the Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the Applicability section of the CIP Standard.

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| **2.40 Revocation Investigation:** An investigation initiated and conducted by a Regional Entity or NERC to determine (i) if an approved TFE Request should be revoked before its Expiration Date, (ii) if the Expiration Date should be advanced to an earlier date, or (iii) if the approved TFE Request should be revised to impose different or additional obligations on the Responsible Entity.

| **2.41 Required Information:** The information required to be provided in a TFE Request, as specified in Section 4.0 of this Appendix.

| **2.42 Rules of Procedure:** The NERC Rules of Procedure.

| **2.43 Self Reporting:** A report by a Responsible Entity of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and the actions that were taken or will be taken to resolve the violation.

| **2.44 Senior Manager:** The person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity's implementation of, and adherence to, the CIP Standards.

| **2.45 Strict Compliance:** Compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

| **2.46 Technical Feasibility Exception or TFE:** An exception from compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in Section 3.0 of this Appendix.

| **2.47 TFE Request:** A request submitted by a Responsible Entity in accordance with this Appendix for an exception from Strict Compliance with an Applicable Requirement.

**2.48 Transmission Operator:** A Responsible Entity that is registered in the Compliance Registry for the reliability function of Transmission Operator.

**2.49 Voluminous Information:** Required Information that is too large (in terms of number of pages or electronic file size) to be transmitted, or otherwise incapable of being transmitted completely or clearly, or that could be transmitted only with great difficulty, to a Regional Entity or NERC, such as extremely lengthy documents, oversized plans, drawings or similar documents, photographs of equipment placement or configuration, or extremely large electronic files. Voluminous Information includes the need to view the Covered Asset or the related Facility, any equipment placement or configuration associated with the Covered Asset or related Facility, or the surrounding environment of the Covered Asset or related Facility, in instances where the aspects of the TFE Request cannot be adequately depicted and conveyed in electronic or paper form.

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### 3.0. BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION

**3.1.** A Responsible Entity may request and obtain approval for a TFE when Strict Compliance with an Applicable Requirement, evaluated in the context or environment of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

(i) is not technically possible or is precluded by technical limitations; or

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(ii) is operationally infeasible or could adversely affect reliability of the bulk power system to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or

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(iii) while technically possible and operationally feasible, cannot be achieved by the date by which the Responsible Entity is required to be in compliance with the Applicable Requirement, due to factors such as scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or

(iv) would pose safety risks or issues that outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or

(v) would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or

(vi) would require the incurrence of costs that far exceed the benefits to the reliability of the bulk power system of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset, the related

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Facility and the bulk power system of continuing to operate with the existing equipment can be shown to be minimal.

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3.2. A TFE does not relieve the Responsible Entity of its obligation to comply with the Applicable Requirement. Rather, a TFE authorizes a departure from Strict Compliance with the Applicable Requirement but requires the Responsible Entity to implement and maintain an alternate approach to achieving compliance with the Applicable Requirement, through the use of compensating measures and/or mitigating measures.

3.3. A TFE typically must be requested for, and will be approved only for, a limited duration, until a stated Expiration Date. The Responsible Entity will be expected to achieve Strict Compliance with the Applicable Requirement by the Expiration Date. Under limited, justified circumstances, a TFE Request may be approved without a specified Expiration Date, subject to periodic review to verify continuing justification for the TFE.

#### 4.0. REQUIRED FORM AND CONTENTS OF A TFE REQUEST

##### 4.1. Separate Submissions for Each TFE Request

A separate TFE Request shall be submitted for each Applicable Requirement pertaining to each Covered Asset for which the Responsible Entity seeks a TFE. An exception to this requirement is where the Responsible Entity seeks TFEs from the same Applicable Requirement for multiple, similar Covered Assets (either at the same location or different locations) on the same basis, with the same compensating measures and/or mitigating measures, and with similar proposed Expiration Dates, in which case the TFE Requests for all the Covered Assets may be included in one submission.

##### 4.2. Form and Format of TFE Request

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A TFE Request shall consist of two parts:

(i) Part A of the TFE Request is the notification to a Regional Entity that a Registered Entity is requesting a TFE. Part A must be submitted in a secure electronic form using the template provided by the Regional Entity. Regional Entities will use Part A for initial screening for eligibility. NERC will use Part A information to develop its annual, wide-area report to the applicable governmental authorities and to provide oversight to the TFE process.

(ii) Part B of the TFE Request contains the detailed material to support a TFE request and includes the documents, drawings, and other information necessary to provide the details and justification for the requested TFE. Part B must also include a detailed description of the alternative mitigating measures the Registered Entity will use while the TFE is in effect to achieve the purposes of the Reliability Standard. The Registered Entity must develop the Part B material at the same time as Part A. Part B must be available at the Registered Entity's location for review by the Regional Entity and/or NERC during an audit, spot check, or other compliance inquiry. A Regional Entity may

also require that all or a portion of Part B must be filed with the Regional Entity, provided that can be accomplished in a secure manner that does not compromise the confidentiality of the information.

**4.3. Required Information to be Included in the TFE Request**

**4.3.1.** Part A of a TFE Request shall contain the Required Part A Information specified by the Regional Entity in the template provided under Section 4.2. Failure to provide all Required Information will result in rejection of the TFE Request as incomplete.

**4.3.2** Part B of a TFE Request shall contain the Required Part B Information specified in this Section 4.3.2. Failure to include all Required Information will result in rejection of the TFE Request as incomplete.

1. A copy of Part A of the TFE Request.

2. Contact information (name, address, phone, facsimile, e-mail) for an employee or other representative of the Responsible Entity designated as principal contact for the TFE Request. The contact information should include information on how a Regional Entity may arrange to review any Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information or Voluminous Information that is part of the TFE Request, or to conduct a physical inspection of the Covered Asset and the related Facility.

3. Location of the Covered Asset for which the TFE is requested, including the Region in which the Covered Asset is located.

4. Applicable Requirement that is the subject of the TFE Request.

5. Narrative discussion and analysis of the basis, consistent with Section 3.0 of this Appendix, on which the Responsible Entity contends the TFE Request should be approved, with supporting documentation. Without limiting the content of this narrative discussion and analysis, it must include:

(i) a description of the specific equipment, process or procedure at or associated with the Covered Asset and subject to or required by the Applicable Requirement, for which the TFE is requested;

(ii) an explanation and demonstration of why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement;

(iii) a discussion of approaches the Responsible Entity considered or evaluated for achieving Strict Compliance with the Applicable Requirement and why these approaches were determined to be unachievable or infeasible;

**Deleted:** be submitted to NERC [electronically] [in paper, with X copies submitted]. [NOTE: NERC is working on development of an electronic portal to receive submission of TFE Requests. The final Appendix will specify whether submission is required electronically or in hard copy.] ¶

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(iv) a discussion and analysis of the impact on reliable operation of the Covered Asset and the related Facility if Strict Compliance with the Applicable Requirement is not achieved, including any vulnerabilities resulting from lack of Strict Compliance; and

(v) a discussion and analysis of the impact on reliable operation of the bulk power system if Strict Compliance with the Applicable Requirement is not achieved, including any vulnerabilities resulting from lack of Strict Compliance.

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6. Narrative discussion and analysis of the compensating measures and/or mitigating measures the Responsible Entity proposes to implement and maintain as an alternate approach to achieving Strict Compliance with the Applicable Requirement, with supporting documentation. Without limiting the content of this narrative discussion and analysis, it must include discussion and analysis of how, and the extent to which, the proposed compensating measures and/or mitigating measures will reduce or prevent any adverse impacts on (i) the reliable operation of the Covered Asset and the related Facility and (ii) the reliable operation of the bulk power system, resulting from the failure to achieve Strict Compliance with the Applicable Requirement, including reducing or eliminating any vulnerabilities resulting from lack of Strict Compliance.

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7. If the TFE Request is supported, in whole or in part, by Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and/or Voluminous Information, a statement identifying which of these categories each such item of information falls into and explaining why each such item of information is Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and/or Voluminous Information. If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), the TFE Request shall identify the Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is subject to such restrictions on disclosure and shall identify the criteria which a person must meet in order to be an Eligible Reviewer of the Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information.

8. The Responsible Entity's proposed time schedule(s) for implementing the proposed compensating measures and/or mitigating measures. The TFE Request may identify compensating measures and or mitigating measures that have already been implemented by the Responsible Entity. The proposed time schedule shall include a proposed schedule for reporting to the Regional Entity on

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the Responsible Entity’s progress in implementing the compensating measures and/or mitigating measures.<sup>3</sup>

9. The Responsible Entity’s proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement, including the Responsible Entity’s proposed Expiration Date. The Responsible Entity should either (i) describe the specific steps it plans to take to achieve Strict Compliance and the planned schedule for each step, including the date by which the Responsible Entity intends to achieve Strict Compliance with the Applicable Requirement, and/or (ii) describe the specific research, design, analytical, testing or other activities the Responsible Entity intends to engage in to determine a means of achieving Strict Compliance with the Applicable Requirement, and the Responsible Entity’s proposed time schedule for these activities. The proposed time schedule shall include a proposed schedule for submitting reports on the Responsible Entity’s progress in implementing the steps to achieve Strict Compliance and/or in carrying out the research, design, analytical, testing or other activities to determine a means to achieve Strict Compliance.<sup>4</sup>
10. If the Responsible Entity contends it will not be possible for it to achieve Strict Compliance with the Applicable Requirement and that the TFE being requested should have no Expiration Date, an explanation and justification as to why it will not be possible for the Responsible Entity to achieve Strict Compliance with the Applicable Requirement by a specified Expiration Date, why the TFE Request should be approved with no Expiration Date, and under what conditions, if any, the Responsible Entity will be able to achieve Strict Compliance with the Applicable Requirement at a future unknown and unspecified date.
11. If the proposed Expiration Date is more than one year from the date the TFE Request is submitted, the Responsible Entity’s proposed schedule for submitting reports to the Regional Entity on the continued need for and justification for the TFE.<sup>5</sup> The proposed reporting schedule shall provide for the submission of such reports on at least an annual basis. If the Responsible Entity proposes an Expiration Date for the TFE, the proposed reporting schedule shall cover the entire period until the Expiration Date.
12. A statement, signed and dated by the Senior Manager, that the Senior Manager has read the TFE Request and understands all the components of the TFE

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<sup>3</sup> The proposed reporting schedule for item 8 may be combined with the proposed reporting schedules for items 9 and 11.

<sup>4</sup> The proposed reporting schedule for item 9 may be combined with the proposed reporting schedule for items 8 and 11.

<sup>5</sup> The proposed reporting schedule for item 11 may be combined with the proposed reporting schedule for items 8 and 9.

Request, and on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria in Section 3.0 of this Appendix.

4.3.2. Schedule dates, implementation dates, reporting dates and the Expiration Date in the TFE Request may be stated as specific calendar dates, as dates occurring a specified number of days following approval of the TFE Request by the Regional Entity, or as dates occurring a specified number of days following the occurrence of a specified event or events.

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4.3.3. With respect to items 5(v) and 6(ii), it is recognized that these discussions and analyses may require information and analyses from other entities that the individual Responsible Entity is unable to secure. The TFE Request should describe any limitations on the Responsible Entity’s ability to provide a comprehensive discussion and analysis of the impacts on reliable operation of the bulk power system (i) if Strict Compliance with the Applicable Requirement is not achieved and (ii) of the implementation of the proposed compensating measures and mitigating measures.

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#### 4.4 Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information Included in Required Information

4.4.1. Upon reasonable advance notice from a Regional Entity or NERC, and subject to Section 4.4.2, the Responsible Entity must provide the Regional Entity or NERC (i) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information included in the Required Information but not provided in the TFE Request, and (ii) with access to the Covered Asset and the related Facility for purpose of making a physical review and inspection. The Regional Entity or NERC is not limited in the number of times it may review such Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information or may conduct a physical review and inspection of the Covered Asset and the related Facility, for purposes of determining if the TFE Request should be approved.

4.4.2. If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall only be reviewed by a representatives or representatives of the Regional Entity or NERC (which may include contractors) who are Eligible Reviewers.

### 5.0 REVIEW OF TFE REQUESTS

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#### 5.1. Initial Screening of TFE Request for Acceptance

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5.1.1. Upon receipt of a TFE Request, the Regional Entity (i) will assign a unique identifier to the TFE Request, and (ii) will review the TFE Request to determine that the TFE Request is for an Applicable Requirement and that all Required Information for Part A of the request has been provided.

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5.1.2. The unique identifier assigned to the TFE Request will be in the form of XXXX-YYY-ZZZZ, where “XXXX” is the year in which the TFE Request is received by the Regional Entity (e.g., “2009”); “YYY” is the acronym for the Regional Entity in whose Region the Covered Asset is located<sup>6</sup>; and “ZZZZ” is the sequential number of the TFE Request received by the Regional Entity for Covered Assets in that Region in that year (e.g., the first TFE Request received for a Covered Asset in a Region in a year will be “0001” and the two-hundredth TFE Request received for a Covered Asset in that Region in that year will be “0200”).

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5.1.3. The Regional Entity shall complete its initial screening within 60 days of receiving the TFE notice. If the Regional Entity determines the TFE Request is for an Applicable Requirement and contains all Required Part A Information, the Regional Entity shall send a notice to the Responsible Entity and to NERC accepting the TFE Request as complete.

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5.1.4. If the Regional Entity determines the TFE Request is (i) not for an Applicable Requirement, or (ii) does not contain all Required Part A Information, the Regional Entity shall send a notice to the Responsible Entity and to NERC rejecting the TFE Request. If the Regional Entity rejects the TFE Request because not all Required Part A Information was provided, the Regional Entity’s notice shall identify the Required Information that was not provided in the TFE Request. The Responsible Entity may then resubmit the TFE Request with all Required Information included within 30 days of the notice of rejection.

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## 5.2 Substantive Review of TFE Request for Approval or Disapproval

5.2.1. The Regional Entity shall conduct a substantive review of an accepted TFE Request to determine if it should be approved in accordance with Section 3.0 of this Appendix, or disapproved. The Regional Entity will conduct the substantive review in accordance with established NERC and Regional Entity processes (audit, spot check, special TFE review). As part of its substantive review, the Regional Entity may request access to and review any Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information that is necessary to support the TFE Request; may conduct one or more physical inspections of the Covered Asset and the related Facility; may request additional information from the Responsible Entity; and may engage in discussions with the Responsible Entity concerning possible revisions to the TFE Request.

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<sup>6</sup> The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Regional Entity); WECC (Western Electricity Coordinating Council); and NERC (applicable where NERC, rather than a Regional Entity, is the Compliance Enforcement Authority for the Responsible Entity).

5.2.2. As part of its review of the TFE Request, the Regional Entity shall perform a wide-area analysis of the impact of the Responsible Entity’s operation pursuant to the requested TFE, if approved, including the proposed compensating factors and/or mitigating factors, on the reliable operation of the bulk power system within the applicable Region or such geographic area as the Regional Entity deems appropriate. In conducting this wide-area analysis, the Regional Entity shall seek such information from, and collaborate in conducting such studies with NERC, one or more other Regional Entities and other Responsible Entities (such as Reliability Coordinators, Balancing Authorities and Transmission Operators) as the Regional Entity deems necessary and appropriate to evaluate the wide area impact of the requested TFE, and shall take into account the numbers and types of TFEs that have been previously approved and are in effect within the geographic area the Regional Entity deems appropriate for the analysis.

5.2.3. The Regional Entity shall conduct a thorough review of the TFE Request, review mitigating measures, and prepare its justification for approval or denial of the TFE within one year of the initial submittal of the TFE Request, unless otherwise extended by the Regional Entity for good cause shown, with concurrence by NERC.

5.2.4. If the Regional Entity approves the TFE Request, the Regional Entity shall provide notice to NERC of the approval and NERC will have 30 calendar days from the date NERC receives the notice to confirm the Regional Entity’s approval or reject the TFE with detailed justification. The notice shall state the basis under Section 3.0 of this Appendix on which the Regional Entity determined the TFE Request should be approved, and shall state the Expiration Date, and all implementation dates and reporting dates, in the approved TFE Request. The Regional Entity shall notify the Registered Entity of NERC’s action either way.

5.2.5. If the Regional Entity disapproves the TFE Request, the Regional Entity shall issue a notice to the Responsible Entity and to NERC stating the reasons it has disapproved the TFE Request. In its notice disapproving a TFE Request, the Regional Entity may, but is not required to, state revisions to the TFE Request that, if made by the Responsible Entity, would result in approval of the TFE Request. If the Responsible Entity submits a revised TFE Request to the Regional Entity incorporating the revisions to the TFE Request set forth in the notice of disapproval, then the Regional Entity shall issue a revised notice, in accordance with Section 5.2.4, canceling the notice of disapproval and approving the revised TFE Request.

5.2.6. A notice disapproving a TFE Request shall state an Effective Date, which shall be no earlier than the thirty-first day following the date of the notice. During the period from the date of the notice to the Effective Date, the Responsible Entity shall either (i) submit to the Regional Entity a Mitigation Plan for achieving Strict Compliance with the Applicable Requirement, or (ii) submit a revised TFE Request in accordance with Section 5.2.5, if applicable. If the Responsible Entity submits a Mitigation Plan, it shall be processed by the Regional Entity, and implemented by the Responsible Entity, in accordance with Section 6.0 of the CMEP.

### 5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request is Being Reviewed

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- Deleted: Unless extended by NERC, it will complete its substantive review of the TFE Request, and issue its notice stating the TFE Request is approved or disapproved, within 60 days following the date of the notice that the TFE Request is accepted as complete. If NERC has not, within the 60 day period for substantive review, issued a notice stating the TFE Request is approved or disapproved or issued a notice extending the period for substantive review, the TFE Request shall be deemed disapproved. In order to extend the initial or extended period for substantive review of the TFE Request, NERC shall, within the initial or extended review period, notify the Responsible Entity and the applicable Regional Entity that the period for substantive review is being extended and identify the date by which NERC will complete substantive review of the TFE Request. NERC’s notice shall also state that if NERC has not issued a notice by the end of the extended period for substantive review either stating that the TFE Request is approved or disapproved or further extending NERC’s period for substantive review, the TFE Request will be deemed disapproved.¶
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The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE Request, for the period from the date of the Regional Entity's notice that the TFE Request is accepted as complete, to (i) the date of the Regional Entity's notice that the TFE Request is approved or (ii) the Effective Date of the Regional Entity's notice that the TFE Request is disapproved, whichever is applicable.

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#### 5.4 Registry of Approved TFE Requests

5.4.1. NERC shall maintain a non-public registry of TFE Requests that have been approved. The registry shall list, for each approved TFE Request:

- (i) the unique identifier assigned to the TFE Request;
- (ii) the name of the Responsible Entity;
- (iii) the location of the Covered Asset;
- (iv) the Applicable Requirement (*e.g.*, CIP-005-1 Requirement R2.4);
- (v) the date the TFE Request was approved by the Regional Entity;
- (vi) the date(s) any amendment(s) to the TFE Request was/were approved;
- (vii) the date of the most recent report filed by the Responsible Entity with respect to the TFE;
- (viii) the date(s) and Effective Date(s) of any Notice(s) of Revocation issued by the Regional Entity or NERC; and
- (ix) the Expiration Date.

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5.4.2. Upon the Expiration Date or revocation of a TFE, it shall be marked in the registry as “expired” or “revoked”, as applicable.

### 6.0 IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE REQUEST

6.1. The Responsible Entity will be required to implement compensating measures and/or mitigating measures as described, and in accordance with the time schedule(s) set forth, in the approved TFE Request.

6.2. The Responsible Entity will be required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirements and eliminating

the TFE, as described, and in accordance with the time schedule(s) set forth, in the approved TFE Request.

**6.3.** The Responsible Entity will be required to submit timely periodic and other reports as specified in the approved TFE Request. The reports that the Responsible Entity may be required to submit include: (i) reports to ~~the applicable Regional Entity on the Responsible Entity’s progress in implementing and maintaining the compensating measures and/or mitigating measures the Responsible Entity is adopting pursuant to the approved TFE Request;~~ (ii) reports to ~~the applicable Regional Entity on the Responsible Entity’s progress in implementing steps and/or conducting research and/or analysis to achieve Strict Compliance with the Applicable Requirement;~~ and (iii) periodic reports to ~~the Regional Entity,~~ which shall be submitted at least annually following approval of the TFE Request, supporting the continued justification for the approved TFE.

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**6.4.** All reports shall be submitted by the dates or in accordance with the time schedule specified in the approved TFE Request, and shall conform to the form and content requirements specified in the approved TFE Request. Each report shall include a statement, signed and dated by the Senior Manager, that the Senior Manager has read, and understands the contents of, the report.

**6.5.** Where a Responsible Entity’s report shows that the Responsible Entity (i) has completed a step in implementing compensating measures or mitigating measures, or (ii) has failed to implement a compensating measure or a mitigating measure in accordance with the time schedule set forth in the approved TFE Request, or (iii) has failed to maintain a previously-implemented compensating measure or mitigating measure, and such development represents a material change in the information, assumptions or parameters used in the wide-area analysis conducted by the NERC pursuant to Section 5.2.2 of this Appendix, then NERC shall conduct a revised wide-area analysis using the changed information, assumptions or parameters.

**6.6.** If a Responsible Entity fails to submit a report by the date or in accordance with the time schedule specified in the approved TFE Request, or submits a report that does not conform to the form and content requirements specified in the approved TFE Request, ~~the Regional Entity~~ may initiate a Revocation Investigation for the purpose of determining if the approved TFE Request should be revoked prior to its Expiration Date, if the Expiration Date should be advanced to an earlier date, or if the approved TFE Request should be revised to impose additional or different requirements on the Responsible Entity.

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**6.7.** If a report submitted by a Responsible Entity shows that the Responsible Entity is failing to implement or maintain compensating measures or mitigating measures in accordance with the schedule set forth in the approved TFE Request, or that the Responsible Entity is failing to implement steps and/or conduct research or analyses to achieve Strict Compliance with the Applicable Requirement in accordance with the time schedule set forth in the approved TFE Request, ~~the Regional Entity or NERC~~ (i) may initiate a Compliance Violation Investigation for the purpose of determining if a notice of Alleged Violation should be issued to the Responsible Entity, and (ii) may initiate a Revocation Investigation for the purpose of determining if the approved TFE should be revoked prior to its Expiration Date, if the Expiration Date should be

advanced to an earlier date, or if the approved TFE should be revised to impose additional or different requirements on the Responsible Entity. The failure of a Responsible Entity to implement or maintain compensating measures or mitigating measures, or to implement steps and/or conduct research or analyses to achieve Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE Request, may be treated by the Compliance Enforcement Authority as an Alleged Violation and processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

**6.8.** The Responsible Entity shall Self Report any failure to implement or maintain compensating measures or mitigating measures in accordance with the schedule set forth in the approved TFE Request, and any failure to implement steps and/or conduct research or analyses to achieve Strict Compliance with the Applicable Requirement in accordance with the time schedule set forth in the approved TFE Request, pursuant to the Self Reporting provisions of the CMEP.

**6.9.** The Responsible Entity’s annual or other periodic report supporting the continued justification for the approved TFE shall contain information as specified in items 1 through 10 and 12 of Section 4.3.1, but revised as appropriate based on current information as of the date of the annual report. The annual or other periodic report shall not propose revisions to implementation, research and reporting dates that were specified in the approved TFE Request, but rather shall report on the Responsible Entity’s progress and accomplishments in carrying out the implementation and research activities. Any revisions to implementation, research and reporting dates, or to other requirements, that were specified in the approved TFE Request shall be requested by an amendment filing in accordance with Section 7.2 of this Appendix.

**6.10.** The Regional Entity shall issue an acknowledgement notice to the Responsible Entity and to NERC that the periodic or other report has been received, but no other issuances shall be required from the Regional Entity in response to submission of such a report. The TFE shall continue in effect until its Expiration Date, in accordance with the terms of the approved TFE Request, unless and until the Regional Entity issues a Notice of Revocation following a Revocation Investigation conducted pursuant to Section 9.0 of this Appendix.

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**6.11.** At least 30 days prior to the Expiration Date, the Responsible Entity shall submit a report to the Regional Entity, signed and dated by the Senior Manager, demonstrating that the Responsible Entity has achieved, or will be able to achieve by the Expiration Date, Strict Compliance with the Applicable Requirement.

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## 7.0 AMENDMENT OF A TFE REQUEST

### 7.1. Amendment of a Pending TFE Request

A Responsible Entity may at any time amend a pending TFE Request that is under review by a Regional Entity, for the purpose of providing additional or revised Required Information. The Responsible Entity may resubmit the entire TFE Request, as amended, or only the portion of the TFE Request that is being amended, if it is easily separable. The Responsible Entity shall

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include a narrative explanation of what Required Information is being added or revised and the purpose of the amendment.

**7.2. Amendment of an Approved TFE Request**

**7.2.1.** A Responsible Entity may submit to the Regional Entity that approved the TFE Request an amendment to an approved TFE Request for the purpose of requesting revision to any of the requirements specified in the approved TFE Request, such as for example revisions to the specific compensating measures and/or mitigating measures to be implemented, an extension of the schedule for implementing the compensating measures and/or mitigating measures, or an extension of the Expiration Date. The Responsible Entity shall submit all the Required Information specified in Section 4.3.1, provided, that if any of the items of Required Information submitted in the original TFE Request (or in any previous amendment) are unaffected by the amendment, the Responsible Entity may so state and submit only the items of Required Information that are affected by the amendment. The Responsible Entity shall include a narrative explanation of the amendment, the reason and purpose of the amendment, and the reason the requirements in the approved TFE Request, for which amendment is requested, cannot be met.

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**7.2.2.** The Regional Entity shall review the amendment filing in accordance with Section 5.1 of this Appendix to determine if it is complete, and shall issue a notice to the Responsible Entity and to NERC stating if the amendment filing is accepted as complete or rejected as incomplete. If the Regional Entity issues a notice that the amendment filing is accepted as complete, the Regional Entity shall conduct a substantive review of the amendment to determine if it should be approved or disapproved, in accordance with Section 5.2 of this Appendix. If the Regional Entity determines the amendment should be approved, the TFE Request as amended replaces the previously approved TFE Request.

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**7.2.3.** An approved TFE Request that is the subject of an amendment filing remains in effect unless and until the amendment is approved by the Regional Entity.

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**8.0 COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE**

**8.1.** Following approval of a Responsible Entity's TFE Request, subsequent Compliance Audits of the Responsible Entity conducted prior to the Expiration Date shall include audit of (i) the Responsible Entity's implementation and maintenance of the compensating measures and/or mitigating measures specified in the approved TFE Request, in accordance with the time schedule(s) set forth in the approved TFE Request, and (ii) the Responsible Entity's implementation of steps and conduct of research and analyses towards achieving Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE Request. These topics shall be included in such Compliance Audits regardless of whether a Compliance Audit was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

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8.2 The first Compliance Audit of the Responsible Entity subsequent to the Expiration Date shall include audit of the Responsible Entity's Strict Compliance with the Applicable Requirement. This topic shall be included in such Compliance Audit regardless of whether it was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

## 9.0 REVOCATION OF AN APPROVED TFE REQUEST

9.1. A Regional Entity or NERC may initiate a Revocation Investigation to determine if an approved TFE Request should be revoked prior to its Expiration Date, if the Expiration Date should be advanced to an earlier date, or if the approved TFE Request should be revised to impose additional or different requirements on the Responsible Entity, if:

(i) the Responsible Entity fails to make a timely submission of a report as specified in the approved TFE Request; or

(ii) a report submitted by the Responsible Entity pursuant to the approved TFE Request does not conform to the form and content requirements for such report as specified in the approved TFE Request; or

(iii) the Regional Entity or NERC obtains information indicating that the Responsible Entity is failing to implement and maintain compensating measures and/or mitigating measures as specified in the approved TFE Request or in accordance with the time schedule(s) set forth in the approved TFE Request; or

(iv) the Regional Entity or NERC obtains information indicating that the Responsible Entity is failing to implement steps or conduct research or analyses towards achieving Strict Compliance with the Applicable Requirement as specified in the approved TFE Request or in accordance with the time schedule(s) set forth in the approved TFE Request; or

(v) the Regional Entity or NERC obtains information indicating that the TFE is no longer necessary in accordance with Section 3.0 of this Appendix or that the Expiration Date should be advanced to an earlier date.

9.2 The Regional Entity or NERC shall initiate a Revocation Investigation by issuing a Notice of Revocation Investigation to the Responsible Entity. The Notice of Revocation Investigation shall state: (i) the basis for the Revocation Investigation, in accordance with Section 9.1, including copies of any documents on which the Regional Entity or NERC relied in determining that the Revocation Investigation should be initiated; (ii) a date (which shall not be less than 30 days from the date of the Notice of Revocation Investigation) by which the Responsible Entity is required to submit a response demonstrating that the approved TFE should not be revoked or the Expiration Date should not be advanced; and (iii) any initial requests for documents or information by the Regional Entity or NERC, with a response date which shall not be less than 30 days from the date of the Notice of Revocation Investigation. The Regional Entity and NERC shall each notify the other of actions taken under Section 9.0.

Deleted: 8.2. Following approval of a Responsible Entity's TFE Request by NERC, the Compliance Enforcement Authority shall attempt to advance the Responsible Entity's next scheduled Compliance Audit from the year in which the Compliance Audit would otherwise be scheduled. If possible, the date for the Responsible Entity's next Compliance Audit shall be advanced to the calendar year immediately following the year in which the TFE Request is approved. The Compliance Enforcement Authority shall consider the following factors in determining whether and to what date the Responsible Entity's next scheduled Compliance Audit can be advanced: (i) the currently-scheduled date or anticipated year of the Responsible Entity's next Compliance Audit; (ii) the need to conduct Compliance Audits of each Reliability Coordinator, Balancing Authority and Transmission Operator at least once every three years, (iii) the need to conduct Compliance Audits of all other Responsible Entities at least once every six years, (iv) the incremental vulnerability of the reliable operation of the Covered Asset and the related Facility and of the Bulk Power System resulting from the approved TFE Request and the failure of the Responsible Entity to achieve Strict Compliance with the Applicable Requirement that is the subject of the approved TFE Request; (v) the time schedule(s) for implementing compensating measures and/or mitigating measures specified in the approved TFE Request; (vi) the Expiration Date; (vii) the overall Compliance Audit resources and CMEP resources of the Compliance Enforcement Authority; and (viii) any other relevant factors in the particular case. The revised date for the Responsible Entity's next Compliance Audit shall be specified in the Compliance Enforcement Authority's Compliance Audit schedule for such year.

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9.3. During the course of the Revocation Investigation, the Regional Entity or NERC may request additional documents and information from the Responsible Entity and may conduct physical inspections of the Covered Asset and the related Facility.

9.4. Any Revocation Investigation shall include an opportunity for the Responsible Entity to submit documents, information and argument to show, as applicable, why the approved TFE should not be revoked prior to its Expiration Date, why the Expiration Date should not be advanced to an earlier date, or why the approved TFE should not be revised to impose different or additional obligations on the Responsible Entity. Before issuing a Notice of Revocation, the Regional Entity or NERC shall issue a proposed Notice of Revocation to the Responsible Entity. The Responsible Entity shall be allowed a time period of not less than seven days from the date the proposed Notice of Revocation is issued to submit comments to the Regional Entity or NERC concerning the proposed Notice of Revocation.

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9.5. Any Notice of Revocation issued by the Regional Entity or NERC shall state (i) the specific revocation action determined by the Regional Entity or NERC (i.e., that the approved TFE is being revoked, that the Expiration Date is being advanced to a stated earlier date, and/or that the approved TFE is being revised to impose different or additional requirements on the Responsible Entity), (ii) the basis for the Notice of Revocation, and (iii) the Effective Date of the Notice of Revocation, which shall be no earlier than the thirty-first day following the date of the Revocation Notice.

9.6. During the period from the date of the Notice of Revocation to the Effective Date, the Responsible Entity shall submit to the Regional Entity a Mitigation Plan for achieving Strict Compliance with the Applicable Requirement. The Mitigation Plan shall be processed by the Regional Entity, and implemented by the Responsible Entity, in accordance with Section 6.0 of the CMEP.

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### 10.0 HEARINGS AND APPEALS PROCESS FOR RESPONSIBLE ENTITY

A Responsible Entity that disputes (i) a rejection or disapproval of a TFE Request, (ii) a rejection or disapproval of a proposed amendment to an approved TFE Requests, or (iii) a Revocation Notice, may request a hearing before the hearing body of the Regional Entity or the CCC, depending upon whether the Regional Entity or NERC has taken the action being disputed. The hearing shall be conducted and a decision rendered by the Regional Entity in accordance with the Regional Entity's rules, or by the CCC in accordance with the procedures specified in Section 409 of the Rules of Procedure and the rules of the CCC. The Responsible Entity may appeal an adverse final order of the Regional Entity or the CCC, and the appeal shall be heard and decided by the BOTCC, in accordance with Sections 409 or 410 of the Rules of Procedure, as appropriate.

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### 11.0 CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION

**11.1.** Except as expressly stated in this Section 11.0, the submission, review, acceptance/rejection, approval/disapproval, and implementation of TFE Requests shall be maintained as confidential. The following documents are Confidential Information and shall be treated as such in accordance with Section 1500 of the Rules of Procedure:

- (i) All TFE Requests and proposed amendments;
- (ii) All notices (including Notices of Revocation) issued by a Regional Entity or NERC pursuant to this Appendix;
- (iii) All requests for documents or information made by a Regional Entity or NERC pursuant to this Appendix;
- (iv) All submissions of documents and information by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;
- (v) All post-approval reports submitted by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;
- (vi) The registry of approved TFE Requests maintained by NERC and the lists of approved TFEs maintained by the Regional Entities;
- (vii) All wide-area analyses prepared by NERC and the Regional Entities pursuant to this Appendix;
- (viii) All correspondence, notes, drawings, drafts, work papers, electronic communications, reports and other documents generated by a Regional Entity or NERC in connection with a TFE Request, including (without limiting the scope of this provision) in connection with reviewing a TFE Request and supporting documents and information submitted by the Responsible Entity, conducting a physical inspection of the Covered Asset or the related Facility, reviewing and analyzing post-approval reports submitted by a Responsible Entity, or conducting Revocation Investigations.

**11.2.** The Annual Report to be submitted by NERC pursuant to Section 12.0 shall be filed with Applicable Governmental Authorities on a public basis and shall not be considered Confidential Information. NERC shall prepare the Annual Report in such a manner that no Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information is disclosed in the Annual Report.

**11.3.** A Responsible Entity may need to rely on Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to support and justify a TFE Request or proposed amendment or to respond to a Revocation Investigation. Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information may be omitted from a TFE Request, an amendment filing, or a submission in a Revocation Investigation, as submitted to a

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Regional Entity, and instead made available for review by the Regional Entity at the Responsible Entity’s offices, the location of the Covered Asset, or other appropriate location, in accordance with Section 4.4 of this Appendix. The Regional Entity will work cooperatively with a Responsible Entity to access Protected FOIA Information in such a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure under the FOIA. However, the inability of the Regional Entity to access and review information, including Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information, that is necessary to determine if a TFE Request or proposed amendment should be accepted/approved in accordance with Section 3.0 of this Appendix, or a Notice of Revocation should be issued, may result in rejection/disapproval of the TFE Request or proposed amendment or in issuance of the Notice of Revocation.

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## 12.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES

### 12.1. Contents of Annual Report

NERC shall submit an Annual Report to FERC that provides a wide-area analysis or analyses regarding the use of the TFE and the impact on the reliability of the bulk power system, as required by Paragraphs 220 and 221 of Order No. 706, which state:

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. . . [W]e direct the ERO to submit an annual report to the Commission that provides a wide-area analysis regarding use of the technical feasibility exception and the effect on Bulk-Power System reliability. The annual report must address, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception. . . [T]he report should contain aggregated data with sufficient detail for the Commission to understand the frequency with which specific provisions are being invoked as well as high level data regarding mitigation and remediation plans over time and by region . . . .

Copies of the Annual Report shall be filed with other Applicable Governmental Authorities. The Annual Report shall contain, at a minimum, the following information:

- (i) The frequency of use of the TFE Request process, disaggregated by Region and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, including (A) the numbers of TFE Requests that have been submitted, accepted/rejected, and approved/disapproved during the preceding year and cumulatively since the effective date of this Appendix, (B) the number of approved TFE Requests that are still in effect as of on or about the date of the annual report; (C) the numbers of TFE that reached their Expiration Dates or were revoked during the preceding year; and (D) the number of TFE that are scheduled to reach their Expiration Dates during the ensuing year;

- (ii) Categorization of the submitted and approved TFE Requests to date by broad categories such as the general nature of the TFE Request and the Applicable Requirements covered by submitted and approved TFE Requests;
- (iii) Categorization of the circumstances or justifications on which the approved TFE Requests to date were submitted and approved, by broad categories such as the need to avoid replacing existing equipment with significant remaining useful lives, unavailability of suitable equipment to achieve Strict Compliance in a timely manner, or conflicts with other statutory and regulation requirements applicable to the Responsible Entity;
- (iv) Categorization of the compensating measures and mitigating measures implemented and maintained by Responsible Entities pursuant to approved TFE Requests, by broad categories of compensating measures and mitigating measures;
- (v) A discussion, on an aggregated basis, of Compliance Audit results and findings concerning the implementation and maintenance of compensating measures and mitigating measures, and the implementation of steps and the conduct of research and analyses to achieve Strict Compliance with the Applicable Requirements, by Responsible Entities in accordance with approved TFE Requests;
- (vi) Assessments, by Region (and for more discrete areas within a Region, if appropriate) and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, of the impacts on the reliability of the bulk power system of approved TFE Requests; and
- (vii) Discussion of efforts to eliminate future reliance on TFE.

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## 12.2. Due Date for Annual Reports

The first Annual Report shall be filed with FERC and with other Applicable Governmental Authorities no later than the last day of the fourth calendar quarter ending after the effective date of this Appendix. Subsequent Annual Reports shall be filed no later than the last day of the same calendar quarter in each succeeding year.

## 12.3. Annual Report to be a Public Document

The Annual Report shall be a public document. Therefore, NERC shall prepare the annual report in such a manner that it does not include or disclose any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information.

## 12.4. Responsible Entities Must Cooperate in Preparation of Annual Report

As specified in Paragraph 220, note 74 of Order No. 706, Responsible Entities must cooperate with NERC and in providing information deemed necessary for NERC to fulfill its reporting obligations to FERC.

Upon completion of its substantive review of the TFE Request, NERC shall issue a notice to the Responsible Entity and to the applicable Regional Entity stating that the TFE Request is approved or that it is disapproved. If NERC approves the TFE Request, NERC's notice shall state the basis under Section 3.0 of this Appendix on which NERC determined the TFE Request should be approved, and shall state the Expiration Date, and all implementation dates and reporting dates, in the approved TFE Request. If NERC disapproves the TFE Request, NERC's notice shall state the reasons it has disapproved the TFE Request.

Related Other Amendments to NERC's Rules of  
Procedure (these are unchanged from the  
March 16 posting)

## **Amendments to Other Provisions of the NERC Rules of Procedure To Accommodate the Technical Feasibility Exemption Procedure**

### **ROP 404.4**

4. **Appeals Process** — Any regional entity or bulk-power system owner, operator or user found by NERC, as opposed to a regional entity, to be in noncompliance with a reliability standard may appeal the findings of noncompliance with reliability standards and any sanctions, or remedial action directives that are issued by NERC pursuant to the processes described in Sections 409 through 411. Any bulk-power system owner, operator or user may appeal the disapproval by NERC of a request for a technical feasibility exception to a critical infrastructure protection reliability standard or of a proposed amendment to an approved technical feasibility exception, or the revocation of an approved technical feasibility exception, pursuant to the procedures described in Sections 409 through 411.

### **ROP 409.1**

1. **Scope of Review** — A registered entity or a regional entity wishing to challenge a finding of noncompliance and the imposition of a penalty for a compliance measure directly administered by NERC, a registered entity wishing to challenge a disapproval by NERC of a request for a technical feasibility exception to a critical infrastructure protection reliability standard or a proposed amendment to an approved technical feasibility exception, or of a revocation of an approved technical feasibility exception, or a regional entity wishing to challenge a regional compliance program audit finding, may do so by filing a notice of the challenge with NERC's director of compliance no later than 21 days after issuance of the notice of finding of violation or audit finding. Appeals by registered entities of decisions of regional entity hearing bodies shall be pursuant to sections 407.3 and 410.

### **ROP 412 [new section]**

#### **412. Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards**

A registered entity that is subject to a requirement of a NERC critical infrastructure protection reliability standard for which technical feasibility exceptions are permitted, may request a technical feasibility exception to the requirement, and the request will be reviewed, approved or disapproved, and if approved, implemented, in accordance with the NERC *Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards*, Appendix 4D to these Rules of Procedure.

## **NERC CMEP, Attachment 2 – Hearing Procedures, P 1.1.1**

### **1.1.1 Procedure Governed**

The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into (i) whether Registered Entities within the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, ~~and~~ (ii) if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and (iii) whether a request for a technical feasibility exception to a NERC critical infrastructure protection Reliability Standard or a proposed amendment to an approved technical feasibility exception should be accepted or approved, or an approved technical feasibility exception should be revoked. Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a [HEARING BODY] established by the Compliance Enforcement Authority. The composition of the [HEARING BODY], after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the [HEARING BODY] on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a Registered Entity’s Mitigation Plan, ~~or requiring compliance with a Remedial Action Directive,~~ or recommending revocation of a technical feasibility exception to a critical infrastructure protection Reliability Standard. The burden of persuasion on the merits of the proceedings shall rest upon the Registered Entity requesting a technical feasibility exception to a critical infrastructure protection Reliability Standard or proposing an amendment to an approved technical feasibility exception.

Part A of the Technical Feasibility Exception Request  
Worksheet

# Technical Feasibility Exception Request – Part A

## Applicable to NERC Reliability Standards CIP-002-1 through CIP-009-1

Complete and submit the following information:

TFE Request Identification Number (Regional Entity use only):

Responsible Entity Name:

Responsible Entity NERC Compliance Registry ID:

Request Submittal Date:

Is this an amended TFE Request? [Select One...](#)

If yes, what was the original TFE Request Identification Number?

Technical Contact:

Name:

Mailing Address:

Phone Number:                      Extension:

Fax Number:

E-mail:

Applicable Requirement for which the TFE is being requested: [Select One...](#)

Number of Covered (Cyber) Asset(s) for which the TFE is being requested:

Is a similar TFE Request being filed with other regions? [Select One...](#)

If yes, which regions will this TFE (with different Covered Assets) be submitted to?

FRCC:                      [Select One...](#)

SERC:                      [Select One...](#)

MRO:                      [Select One...](#)

SPP RE:                      [Select One...](#)

NPCC:                      [Select One...](#)

Texas RE:                      [Select One...](#)

RFC:                      [Select One...](#)

WECC:                      [Select One...](#)

For what type of equipment, process, or procedure at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement is the TFE is requested? If relying upon a NERC Class-Type TFE, select "Class-Type TFE" and enter the Class-Type TFE Identifier below:

[Select One...](#)

## Technical Feasibility Exception Request – Part A Applicable to NERC Reliability Standards CIP-002-1 through CIP-009-1

If Other, please briefly describe or enter the NERC Class-Type TFE Identifier:

What is the basis for the TFE Request? [Select One...](#)

Provide a brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement:

What is the estimated impact on reliable operation of the Bulk Electric System if Strict Compliance with the Applicable Requirement is not achieved? [Select One...](#)

Provide a brief summary of the compensating and/or mitigating measures that are planned or have been implemented:

Have the compensating and/or mitigating measures been fully implemented? [Select One...](#)

If Yes, what is the actual completion date for implementing all necessary compensating and/or mitigating measures?

If No, what is the proposed date for implementing all necessary compensating and/or mitigating measures?

Is there a proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement? [Select One...](#)

If Yes, what is the proposed Expiration Date?

And, what the plan for terminating the TFE? [Select One...](#)

Provide a brief explanation for "Other":

If No, explain why an open-ended TFE is requested:

Is this TFE Request supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information? [Select One...](#)

Does the Responsible Entity understand and agree to the requirement to submit timely periodic and other reports as specified in the approved TFE Request? The reports that the Responsible Entity may be required to submit following approval of the TFE request to the applicable Regional Entity include: (i) reports on the Responsible Entity's progress in implementing and maintaining the compensating measures and/or mitigating measures the Responsible Entity is adopting pursuant to the approved TFE Request; (ii) reports on the Responsible Entity's progress in implementing steps and/or conducting research and/or analysis to achieve Strict Compliance with the Applicable Requirement; and (iii) reports supporting the continued justification for the approved TFE. [Select One...](#)

## **Technical Feasibility Exception Request – Part A**

### **Applicable to NERC Reliability Standards CIP-002-1 through CIP-009-1**

Include a statement, signed and dated by the Senior Manager, asserting that the Senior Manager has read the TFE Request and understands all the components of the TFE Request, and on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria listed above.

Instructions to Part A of the Technical Feasibility  
Exception Request Worksheet

# Technical Feasibility Exception Request – Part A Instructions

## Applicable to NERC Reliability Standards CIP-002-1 through CIP-009-1

Please complete the information in the Technical Feasibility Exception Request – Part A form. You may refer in your response to a supporting document that is included in the Technical Feasibility Exception (TFE) Request submittal package. Once completed, submit the TFE Request form and any supporting documentation to the Regional Entity via secure means specified by the Regional Entity.

Complete responses and supporting documentation are essential to the evaluation and approval of the TFE Request. All parties understand that certain information in the TFE Request is highly sensitive and may be subject to the submitting entity's information protection program. All submitted TFE Requests and supporting documentation will be protected from unauthorized access and disclosure by the Regional Entity recipient per NERC Rules of Procedure Section 1500.

TFE Requests are limited to those requirements in the Cyber Security Standards (CIP-002-1 through CIP-009-1) where technical feasibility or similar language is found, specifically:

- CIP-005-1, Requirements R2.4, R2.6, R3.1, and R3.2
- CIP-006-1, Requirement R1.1
- CIP-007-1, Requirements R2.3, R3.2, R4, R4.1, R5.3, R5.3.1, R5.3.2, R5.3.3, R6, and R6.3

Applicability is specific to the requirement and is not automatically conveyed to any sub-requirements of the Applicable Requirement.

One TFE Request may be submitted for multiple Covered Assets, provided the Covered Assets:

- reside in the same Region,
- provide a similar function,
- share a common infeasibility, and
- share a common mitigation plan.

For example, a series of relays may restrict the password length to five characters. One TFE Request may be submitted for this series of relays.

Note: Capitalized terms may appear in either the NERC Glossary or in the Definitions below.

### Definitions

**Applicable Requirement:** A requirement of a CIP standard that expressly provides either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement.

**Covered Asset:** A Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

**Eligible Reviewer:** A person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to classified National Security Information, NRC Safeguards Information, or Protected FOIA Information, as applicable to the particular information to be reviewed.

**Expiration Date:** The date on which a TFE expires, as specified in the approved TFE Request or in a Notice of Revocation.

**Safeguards Information (SGI):** Safeguards information is a special category of sensitive unclassified information authorized by Section 147 of the Atomic Energy Act to be protected. Safeguards information concerns the physical protection of operating power reactors, spent fuel shipments, strategic special nuclear material, or other radioactive material.

**Protected FOIA Information:** Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)) or any similar state or local statutory provision which would be lost were the Required Information to be placed into the public domain. [NOTE: This definition should be interpreted to include any Canadian or provincial provisions similar to FOIA.]

**Region:** The geographic boundaries of a Regional Entity.

**Regional Entity:** The organization that has compliance enforcement authority for the Critical Asset supported by the Covered Asset that is the subject of the TFE request.

**Responsible Entity:** A user, owner or operator of the Bulk Electric System that is registered in the Compliance Registry and is responsible for complying with an Applicable Requirement, as specified in the Applicability section of the CIP Standard.

**National Security Information (NSI):** Information classified by an Executive Order, whose compromise would cause some degree of damage to the national security.

**Senior Manager:** The person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity's implementation of, and adherence to, the CIP Standards.

**Strict Compliance:** Compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

**Technical Feasibility Exception (TFE):** An exception from compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria shown below.

**TFE Request:** A request submitted by a Responsible Entity in accordance with the published Interim TFE process for an exception from Strict Compliance with an Applicable Requirement.

### **BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION**

A Responsible Entity may request and obtain approval for a TFE when Strict Compliance with an Applicable Requirement, evaluated in the context or environment of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

1. is not technically possible, or is precluded by technical limitations; or

2. is operationally infeasible or could adversely affect reliability of the bulk electric system to an extent that outweighs the reliability benefits of strict compliance with the applicable requirement; or
3. while technically possible and operationally feasible, cannot be achieved by the date by which the Registered Entity is required to be in compliance with the applicable requirement, due to factors such as scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or
4. would pose safety risks or issues that outweigh the reliability benefits of strict compliance with the applicable requirement; or
5. would conflict with, or cause the Registered Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Registered Entity, the covered asset or the related facility that must be complied with and cannot be waived or exempted; or
6. would require the incurrence of costs that far exceed the benefits to the reliability of the bulk electric system of strict compliance with the applicable requirement, such as for example by requiring the retirement of existing equipment that is not capable of strict compliance with the applicable requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of strict compliance, where the incremental risk to the reliable operation of the covered asset, the related facility and the bulk electric system of continuing to operate with the existing equipment can be shown to be minimal.

1.

## **GENERAL INSTRUCTIONS**

1. All questions must be answered. Failure to answer a question will result in rejection of the TFE request. Entities will have thirty (30) days after the first rejection to remedy any issues and resubmit the request.
2. When entering information into a field, do not use the Enter key to complete the entry and move to the next field. Instead, use the Tab key or use the mouse to click in the next field. The Enter key inserts a carriage-return (new line) in the entered text.
3. All text fields are limited to 255 characters. If additional information is needed, please refer in the entry field to a separately submitted document and include that document in the submittal package.
4. Drop-down lists are indicated by the text “Select One...” You must select a response from the list provided.
5. Date fields are in the format m/d/yyyy. Entering only a month and day will default to the current year. Entering a two-digit year will automatically reformat to a four-digit year when you tab or click to the next field.
6. The Phone and Fax Number fields are in the format (nnn) nnn-nnnn. You may enter the phone or fax number as a string of ten digits with or without parentheses and spacing. You may also enter the number with dashes (e.g. nnn-xxx-nnnn). The number will automatically reformat when you tab or click to the next field.

## **SPECIFIC QUESTION INSTRUCTIONS**

*Technical Point of Contact:* Enter the contact information for the primary subject matter expert who can answer technical questions regarding the TFE submittal. Normally this will not be the Authorizing Officer or Primary Compliance Contact.

*Number of Covered (Cyber) Asset(s) for which the TFE is being requested:* Enter the total number of Covered Assets in your region covered by this TFE request. Do not include Covered Assets in other regions that are handled by a similar TFE Request submission to one or more other regions.

*Is a similar TFE Request being filed with other regions?* Indicate Yes or No. If your answer is “Yes,” identify the other regions that will receive a similar request. This information will be used to coordinate the evaluation and acceptance of the request.

*Provide a brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement:* Describe what the technical infeasibility issue is and why you cannot strictly comply with the Applicable Requirement. At a minimum, provide a high-level explanation and attached a more detailed explanation if necessary to ensure understanding of the issue.

*Provide a brief summary of the compensating and/or mitigating measures that are planned or have been implemented:* Provide a high-level overview of how you have or will compensate and/or mitigate the inability to strictly comply with the Applicable Requirement.

*Is this TFE Request supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information?* In the United States, this question refers to information classified by a US Government Agency (refer to Executive Order 12958 – Classified National Security Information, as Amended), information protected under 10 CFR 73.22 – Protection of Safeguards Information: Specific Requirements (and related regulations), and information asserted by a US Government Agency to be protected from Freedom of Information Act requests in accordance with 5 U.S.C. § 552(b). Similar regulations apply in Canada and Mexico. Additional information on Classified Information can be found at: [http://en.wikipedia.org/wiki/Classified\\_information](http://en.wikipedia.org/wiki/Classified_information). Additional information on the protection of Safeguards Information can be found at: <http://www.nrc.gov/reading-rm/doc-collections/cfr/part073/>. Information on FOIA exemptions can be found at: <http://www.osec.doc.gov/omo/FOIA/exemptions.htm>.

*Does the Responsible Entity understand and agree to the requirement to submit timely periodic and other reports as specified in the approved TFE Request?* Entities are required to submit quarterly progress reports as work is performed and notices of completion when the entity achieves strict compliance with the Applicable Requirement. Entities are required to implement and maintain mitigating and compensating measures during the time they are not in strict compliance with the Applicable Requirement. Selecting “Yes” to this question asserts the entity understands these requirements.