

**APPENDIX 5C**

**PROCEDURE FOR REQUESTING AND RECEIVING**

**AN EXCEPTION FROM THE APPLICATION**

**OF THE**

**NERC DEFINITION OF BULK ELECTRIC SYSTEM**

**Effective: July 1, 2014**

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## 1.0 INTRODUCTION

### 1.1 Purpose

The NERC definition of the Bulk Electric System uses specific terms and thresholds that, in most cases, should appropriately identify Elements and groups of Elements that are appropriately classified as part of the Bulk Electric System. Conversely, the BES Definition should, in most cases, exclude Elements that are not part of the Bulk Electric System. In certain cases, however, the BES Definition may classify certain Elements as part of the Bulk Electric System that are not necessary for the Reliable Operation of the interconnected bulk-power transmission system or the BES Definition may classify certain Elements as non-Bulk Electric System that are necessary for the Reliable Operation of the interconnected bulk-power transmission system.

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation provides the procedure by which an entity may request and receive an Exception which will have the effect of either including within the BES an Element or Elements that would otherwise be excluded by application of the BES Definition or excluding from the BES an Element or Elements that would otherwise be included by application of the BES Definition. This Appendix is intended to implement authorization granted by FERC to allow such Exceptions from the BES Definition.<sup>1</sup>

An entity must request and obtain an Exclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is included in the BES by application of the BES Definition shall be excluded from the BES. Likewise, an entity must request and obtain an Inclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is excluded from the BES by application of the BES Definition shall be included in the BES.

During the pendency of an Exception Request, the status of an Element(s) that is the subject of an Exception Request shall remain as it is determined based on application of the BES Definition. This status will continue until all appeals to all Applicable Governmental Authorities are completed. An entity that is planning a connection of a new Element for which it believes an Exception would be appropriate may request an Exception prior to commercial operation of the Element.

The Owner of the Element to which the Exception Request applies or, with respect to an Element owned by another Registered Entity, any Regional Entity, Planning Authority (“PA”), Reliability Coordinator (“RC”), Transmission Operator (“TOP”), Transmission Planner (“TP”) or Balancing Authority (“BA”) that has (or will have upon inclusion of the Elements in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the Element as provided in this Exception Procedure.

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<sup>1</sup> *Revision to Electric Reliability Organization Definition of Bulk Electric System*, 133 FERC ¶ 61,150 (“Order No. 743”) (2010), *Order on Reh’g, Revision to Electric Reliability Organization Definition of Bulk Electric System*, 134 FERC ¶61,210 (“Order No. 743-A”) (2011).

## 1.2. Authority

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. 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. This Exception Procedure or an equivalent procedure is to be implemented in Canada and Mexico consistent with their respective laws and agreements.

## 1.3 Canadian and Mexican Entities and Cross-Border Regional Entities

A Registered Entity that is a Canadian Entity or a Mexican Entity seeking an Exception will be expected to work with the Regional Entity, NERC, and Applicable Governmental Authorities in Canada or Mexico, as appropriate, consistent with their respective laws and agreements, and without being obligated to authorize the disclosure of information prohibited by applicable federal, state or provincial law from disclosure to FERC or other governmental authorities in the U.S., in order to implement this Exception Procedure or an equivalent procedure. A Canadian Entity or a Mexican Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the entity in order to utilize this Exception Procedure or an equivalent procedure.

## 2.0. DEFINITIONS

For purposes of this Appendix, capitalized terms shall have the definitions set forth in Appendix 2 to the Rules of Procedure. For ease of reference, the definitions of the following terms that are used in this Appendix are also set forth below.

**2.1 Acceptance of the Exception Request (or Acceptance):** The determination that an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) contains all the Required Information so that it can undergo substantive review.

**2.2 Approval of the Exception Request (or Approval):** The determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

**2.3 BES:** Bulk Electric System.

**2.4 BES Definition:** The NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

**2.5 Canadian Entity:** A Registered Entity that is organized under Canadian federal or provincial law.

**2.6 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; or pursuant to any comparable provision of Canadian or Mexican federal or provincial law.

**2.7 Disapproval of the Exception Request (or Disapproval):** The determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

**2.8 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.

**2.9 Exception:** Either an Inclusion Exception or an Exclusion Exception.

**2.10 Exception Procedure:** The procedure set forth in this Appendix.

**2.11 Exception Request:** A request made by a Submitting Entity in accordance with this Appendix for an Exception.

**2.12 Exception Request Form:** The form adopted by each Regional Entity, in accordance with a template provided by NERC, for use by Submitting Entities in submitting Exception Requests; provided, that the Exception Request Form must include Section III.B as adopted by NERC.

**2.13 Exclusion Exception:** A determination that an Element that falls within the BES Definition should be excluded from the BES.

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

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

**2.16 Inclusion Exception:** A determination that an Element that falls outside the BES Definition should be included in the BES.

**2.17 Lead Entity:** The entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

**2.18 Mexican Entity:** A Registered Entity that is organized under Mexican law.

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

**2.20 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. §73.21-73.23; or pursuant to comparable provisions of Canadian or Mexican federal or provincial law.

**2.21 Owner:** The owner(s) of an Element or Elements that is or may be determined to be part of the BES as a result of either the application of the BES Definition or an Exception, or another entity, such as an operator, authorized to act on behalf of the owner of the Element or Elements in the context of an Exception Request.

**2.22 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)], under any similar state or local statutory provision, or under any comparable provision of Canadian or Mexican federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

**2.23 Recommendation:** The report to NERC containing the evaluation prepared in accordance with section 5.2 concerning whether or to what extent an Exception Request should be approved.

**2.24 Rejection of the Exception Request (or Rejection):** The determination that an Exception Request is not an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) or does not contain all the Required Information in accordance with section 4.5 in order to be reviewed for substance.

**2.25 Required Information:** Information required to be provided in an Exception Request, as specified in section 4.0.

**2.26 Scope of Responsibility:** The registered functions of a PA, RC, TOP, TP or BA and the geographical or electric region in which the PA, RC, TOP, TP or BA operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

**2.27 Section I Required Information:** Required Information that is to be provided in Section I of a Submitting Entity's Exception Request.

**2.28 Section II Required Information:** Required Information that is to be provided in Section II of a Submitting Entity's Exception Request.

**2.29 Section III Required Information:** Required Information that is to be provided in Section III of a Submitting Entity's Exception Request.

**2.30 Submitting Entity:** The entity that submits an Exception Request in accordance with section 4.0.

**2.31 Technical Review Panel:** A panel established pursuant to section 5.3 of this Appendix.

### **3.0. BASIS FOR APPROVAL OF AN EXCEPTION**

#### **3.1. Grounds for an Exception**

##### (a) Exclusion Exception

An entity may request and obtain Approval from NERC for an Exclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is included within the BES based on application of the BES Definition but is not necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

##### (b) Inclusion Exception

An entity may request and obtain Approval from NERC for an Inclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is not included within the BES based on application of the BES Definition but is necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

#### **3.2. Burden**

The burden to provide a sufficient basis for Approval of an Exception Request in accordance with the provisions of this Exception Procedure is on the Submitting Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Exception Procedure, to evaluate the request and make a Recommendation to NERC regarding its Approval. All evidence provided as part of an Exception Request or response will be considered in determining whether an Exception Request shall be approved or disapproved.

### **4.0. FORM, CONTENTS, AND SUBMISSION OF AN EXCEPTION REQUEST**

#### **4.1. Eligible Submitting Entities**

The Owner of an Element may submit an Exception Request for either an Inclusion Exception or an Exclusion Exception regarding that Element. A Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by a Registered Entity, provided that before doing so, (i) the Submitting Entity conferred with the Owner about the reasons for an Exception, and (ii) could not reach agreement regarding the submission of such an Exception Request. (If the Owner agrees with submitting an Exception Request, the Owner should be the Submitting Entity.) Only a Regional Entity may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by an Owner that is not a Registered Entity. Only an

Owner or a Regional Entity may submit an Exception Request for the exclusion from the BES of an Element.

When a Regional Entity requests an Exception, the Regional Entity shall be the Submitting Entity and shall prepare and submit copies of its Exception Request (or portions thereof) to all applicable entities in accordance to this section 4.0.

With respect to an Element that crosses a boundary between Regional Entities, (1) the Submitting Entity will submit the Exception Request to both (or all) Regional Entities, which will cooperate to process the Exception Request pursuant to section 5.1 below, or (2) the Regional Entities must jointly submit an Exception Request to NERC (neither Regional Entity shall be allowed to submit such Exception Request unilaterally).

#### **4.2. Separate Submissions for Each Exception Request**

A separate Exception Request shall be submitted for each Element or set of connected Elements for which the Submitting Entity seeks an Exception. The scope of an Exception Request shall cover the terminal connections of the Element or set of Elements as identified in the Exception Request. Where the Submitting Entity seeks Exceptions from the BES Definition for multiple, similar Elements (either at the same location or at different locations within the geographic boundaries of a Regional Entity) on the same basis, the Exception Requests for all such Elements may be included in one Exception Request with all such Elements or sets of connected Elements separately identified. A single Exception Request may not be submitted for separate Elements within the geographic boundaries of more than one Regional Entity.

Multiple Submitting Entities may jointly file Exception Requests for similar Elements for which they are requesting Exceptions on the same basis. In such a situation, the Submitting Entities will submit a package comprised of a complete Exception Request Form for a Lead Entity, and an Exception Request Form for each other Submitting Entity that (1) provides the Submitting Entity's differing individual information to the extent such is required (e.g., contact information, identification, and location of Element(s), etc.), and (2) otherwise references the pertinent portions of the complete Exception Request Form filed by the Lead Entity (e.g., status under application of the BES Definition, basis for an Exception under section 3.1, etc.). For any Exception Request filed by multiple Submitting Entities as provided in this section, the Lead Entity shall be considered the "Submitting Entity" for purposes of the Regional Entity's and NERC's notices and actions in accordance with the remainder of this Exception Procedure. However, any Owner nonetheless may take any action otherwise appropriate for a Submitting Entity (e.g., respond to a Recommendation, submit an appeal, etc.).

#### **4.3. Withdrawal of an Exception Request**

A Submitting Entity may withdraw an Exception Request at any time prior to NERC Approval or Disapproval of the Exception Request.



#### **4.4. Form and Format of Exception Request**

An Exception Request shall consist of three sections, all of which must be submitted to the applicable Regional Entity. If the Submitting Entity is not the Owner [i.e., is a Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion of the Element in the BES) the Elements covered by an Exception Request within its Scope of Responsibility], it shall at the same time provide a copy of the Exception Request to the Owner (or if the Owner is unknown, to the operator of the Element(s)) to which the Exception Request applies.

#### **4.5. Required Information to be Included in the Exception Request**

**4.5.1.** Section I of an Exception Request shall contain the Required Information specified in this section 4.5.1. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section I to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section I Required Information may result in Rejection of the Exception Request as incomplete.

1. Name and address of Submitting Entity.
2. Submitting Entity NERC Compliance Registry ID (if yet assigned).
3. Name of the Owner, if different than the Submitting Entity,
4. Owner's NERC Compliance Registry ID (if yet assigned).
5. Exception Request submittal date.
6. Whether the Exception Request is an original Exception Request or an amended Exception Request; and if it is an amended Exception Request, the identification number(s) of the original Exception Request and any previous amendments.
7. Whether the Exception Request is being submitted in conjunction with Exception Requests by other Submitting Entities. If so, the names of the other Submitting Entities.
8. Whether the Submitting Entity is filing a similar Exception Request(s) with one or more other Regional Entities, and if yes, the name(s) of the other Regional Entity(ies).
9. The type(s) of Element(s) for which the Exception is being requested.
10. Status, based on application of the BES Definition, of the Element(s) for which the Exception is being requested.

**4.5.2.** Section II of an Exception Request shall contain the Required Information specified in this section 4.5.2. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section II to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section II Required Information may result in Rejection of the Exception Request as incomplete.

Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing the Exception Request.

1. Identification and location(s) of Element(s) for which the Exception is being requested.
2. Name, title, phone number, facsimile number, and E-mail address of the Submitting Entity's technical contact person for the Exception Request.
3. Certification by the Submitting Entity (if other than Owner) that it conferred with the Owner regarding the reason for the requested Exception, but could not reach agreement regarding the submission of an Exception Request.
4. To the extent known by the Submitting Entity, name, mailing address, phone number, facsimile number, and E-mail address of the Owner's technical contact person for the Exception Request, if the Owner is different from the Submitting Entity.
5. Identification of PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility, and certification by the Submitting Entity that it has sent copies of Sections I and II to each such entity.
6. A statement of the basis on which the Submitting Entity contends the Exception Request should be approved, and if the Submitting Entity is not the Owner, a statement of the basis of the Submitting Entity's reason for submitting the Exception Request.
7. A statement, signed and dated by an authorized representative of the Submitting Entity's senior management stating that the representative has read the Exception Request on behalf of the Submitting Entity and that the Submitting Entity believes Approval of the Exception Request is warranted.

**4.5.3** Section III of an Exception Request shall contain the **Detailed Information to Support an Exception Request** as specified on the Exception Request Form. Failure to include all Section III Required Information may result in Rejection of the Exception Request. The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.

1. If the Exception Request is supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information, Section III shall include a statement identifying which of these categories each such item of information falls into and explaining why each such item of information is Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information.
2. If the Submitting Entity is prohibited by law from disclosing any 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), Section III shall identify the 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 Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information.

**4.5.4** The Owner of the Element(s) to which the Exception Request applies, if different than the Submitting Entity, may file a response to supplement, correct or disagree with all or any part of an Exception Request. Any PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may also provide input to the Regional Entity regarding the Exception Request. If in order to evaluate an Exception Request, the Owner, PA, RC, TOP, TP or BA wishes to obtain any Required Information in Section III of the Exception Request, the Owner, PA, RC, TOP, TP or BA may submit to the Regional Entity that received the Exception Request a request stating its reason for wanting to review such information, and the Regional Entity may provide such information to the Owner, PA, RC, TOP, TP or BA if the Regional Entity believes such review may assist the Regional Entity's review; if any of such Section III Required Information has been designated Confidential Information, prior to being provided the Confidential Information, the Owner, PA, RC, TOP, TP or BA shall execute a confidentiality agreement in a form established by the Regional Entity. Any response provided pursuant to this section 4.5.4 must be submitted to the Regional Entity with copies to the Submitting Entity and the Owner, if different from the Submitting Entity, within forty-five (45) days after the date the Exception Request Form was submitted to the Regional Entity.

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

**4.6.1.** Upon reasonable advance notice from a Regional Entity, and subject to section 4.6.2, a Submitting Entity or Owner must provide the Regional Entity (a) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the Exception Request, and (b) with

access for purposes of making a physical review and inspection of the Element or Elements for which an Exception Request has been submitted.

**4.6.2.** If the Submitting Entity or Owner 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 representative or representatives of the Regional Entity which may include contractors, who are Eligible Reviewers.

**4.6.3.** The Regional Entity, as applicable, will work cooperatively with the Submitting Entity and/or Owner to provide necessary levels of protection for information identified in Section 1500 of the NERC Rules of Procedure and to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure. If the Regional Entity shares any Confidential Information with a third party it shall do so subject to restrictions in applicable law under appropriate confidentiality agreements.

## **5.0 REVIEW, ACCEPTANCE OR REJECTION, AND RECOMMENDATION REGARDING EXCEPTION REQUESTS**

The Regional Entity's evaluation of the Exception Request will consist of two stages:

- (a) During the first stage, the Regional Entity shall conduct an initial screening to determine whether to accept or reject the Exception Request; and
- (b) During the second stage, the Regional Entity shall conduct a substantive review to determine its Recommendation to NERC as to whether or not the Exception Request should be approved.

If the Regional Entity determines at any time that for a specified period of time, the Regional Entity will be unable to complete initial screenings of Exception Requests within the time provided by section 5.1.3(a) and/or substantive reviews of Exception Requests within the time provided in section 5.2.2, the Regional Entity, based on consultation with NERC, shall establish an alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests during the specified period of time. The alternative time period and work plan shall be publicized by posting on the Regional Entity's website.

When a Regional Entity is the Submitting Entity of an Exception Request, it nonetheless shall process such Request in accordance with this section 5.0, with the following exceptions:

- i. There will be no initial screening, Acceptance, or Rejection, and therefore sections 5.1.3 through 5.1.6 will not apply;

- ii. No later than sixty (60) days after the submission of the Exception Request to the Owner and other applicable entities, the Regional Entity shall commence its substantive review of the Exception Request (and of any responses received from the Owner and other applicable entities) in accordance with section 5.2 and shall complete such substantive review within six (6) months; and
- iii. Before the Regional Entity issues a Recommendation to NERC to approve or disapprove the Exception Request in whole or in part, the Technical Review Panel shall review the proposed determination and issue an opinion with copies provided to the Owner and to NERC, in accordance with section 5.3.

### **5.1. Initial Screening of Exception Request for Acceptance or Rejection**

**5.1.1.** Upon receipt of an Exception Request, the Regional Entity will assign a unique identifier to the Exception Request, and will review the Exception Request to determine that the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the application of the BES Definition and that all Required Information has been provided. If the Exception Request indicates that the Submitting Entity has submitted a similar Exception Request to one or more other Regional Entities, the Regional Entities shall coordinate their actions undertaken pursuant to this section 5.0. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the Regional Entities shall cooperatively determine a lead Regional Entity to assess the request in a single process yielding a single Recommendation to NERC.

**5.1.2.** The unique identifier assigned to the Exception Request will be in the form of XXXX-YYYY-NERCID-ExceptionZZZZZ, where “XXXX” is the year in which the Exception Request is received by the Regional Entity (*e.g.*, “2012”); “YYYY” is the acronym for the Regional Entity within whose geographic boundaries the relevant Element or Elements are located<sup>2</sup>; NERCID is the Submitting Entity’s NERC Compliance Registry ID (or an abbreviation of its name if an ID is not yet assigned); and “ZZZZZ” is the sequential number of the Exception Requests received by the Regional Entity in that year. If the Exception Request is amended or resubmitted, “-AZ” will be added to the end of the identifier, where “Z” is the number of the amendment to the Exception Request. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the YYYY identifier shall be that of the lead Regional Entity assessing the request.

**5.1.3.** The Regional Entity will complete its initial screening of the Exception Request Form and any Owner’s response submitted pursuant to section 4.5.4 no later than either sixty (60) days after receiving the Exception Request or, if the Submitting Entity is not the Owner, thirty (30) days after receiving any Owner’s response, whichever is later, unless (i) the

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<sup>2</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 Reliability Entity); and WECC (Western Electricity Coordinating Council), and NERC in cases where the Exception Request is submitted to NERC.

Regional Entity has established an alternative time period objective and work plan for completing initial screenings pursuant to this section 5.0 that provides for a different time period(s) for completing initial screenings, or (ii) the Regional Entity issues a notice to the Submitting Entity, and to the Owner if different, prior to the deadline date for completing the initial screening, stating that the Regional Entity will not be able to complete the initial screening by the deadline date and stating a revised deadline date.

**5.1.4.** If, based on its initial screening, the Regional Entity determines the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the BES Definition, and that all Required Information has been provided, the Regional Entity shall accept the Exception Request as complete and send a notice of such Acceptance to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC.

**5.1.5.** (a) If the Regional Entity determines, based on its review of the Exception Request, that the Exception Request (i) is not from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from application of the BES Definition, and/or (ii) does not contain all Required Information, the Regional Entity shall reject the Exception Request as incomplete and send a notice of such Rejection to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC. To the extent feasible, if an Exception Request Form is missing Required Information, the Regional Entity shall not reject the Exception Request until (1) it has contacted the Submitting Entity to request that the Exception Request Form be supplemented with the missing Required Information, and (2) the Submitting Entity has failed to submit such Required Information within thirty (30) days or such additional period of time as the Regional Entity may allow at its discretion based on the circumstances. Under appropriate confidentiality/security agreements, the Regional Entity shall facilitate the access to data and information from other entities required by the Submitting Entity to accurately supply the **Detailed Information to Support an Exception Request** (e.g., interconnection base case power flow studies) and/or by the Owner to accurately respond. When a Submitting Entity submits supplemental Required Information in response to a request under this section 5.1.5(a), the time for the Regional Entity to perform its initial screening will be extended for fifteen (15) days after receipt of the supplemental Required Information.

(b) If the Regional Entity rejects the Exception Request in accordance with section 5.1.5 (a), the Regional Entity's notice shall explain the reason for the Rejection. The Submitting Entity may, within thirty (30) days after receipt of the Rejection, appeal to NERC in accordance with section 7.0 of this Exception Procedure to reverse the Rejection and to direct the Regional Entity to proceed with a substantive review of the Exception Request.

**5.1.6.** The Regional Entity may either accept the Exception Request in its entirety, reject the Exception Request in its entirety, or if the Exception Request is for more than one Element, may accept it with respect to a subset of the Elements and reject it with respect to the remainder based on the similarity of the evidence presented for the Exception Request.

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

**5.2.1** After Acceptance of an Exception Request, the Regional Entity shall conduct a substantive review of all evidence provided as part of an Exception Request or response to evaluate whether or to what extent the Exception Request should be approved. As part of its substantive review, depending on the circumstances of the Exception Request, the Regional Entity may request access to and review the Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information that is necessary to support the Exception Request; may conduct one or more physical inspections of the relevant Element(s) and its (their) context and surrounding Elements and Facilities; may request additional information from the Submitting Entity, Owner, or applicable PAs, RCs, BAs, TOPs and TPs; and may engage in further discussions concerning possible revisions to the Exception Request.

**5.2.2.** At the outset of its substantive review of the Exception Request, the Regional Entity shall develop a milestone schedule pursuant to which it plans to conduct the substantive review, and shall send a copy of the milestone schedule to the Submitting Entity and the Owner, if different, for information. The Regional Entity shall complete the substantive review of the Exception Request within six months after Acceptance of the Exception Request or within an alternative time period under section 5.0, at the conclusion of which the Regional Entity shall issue a notice (in accordance with section 5.2.3) stating its Recommendation that the Exception Request be approved or disapproved. The Regional Entity may extend the period of substantive review for individual Exception Requests; the revised date by which the Regional Entity will issue its Recommendation concerning the Exception Request shall be stated in a notice issued by the Regional Entity.

**5.2.3.** Upon completion of its substantive review of the Exception Request, the Regional Entity shall issue a Recommendation to NERC, with a copy to the Submitting Entity and to the Owner if different than the Submitting Entity, including the Regional Entity's evaluation of whether and to what extent the Exception Request qualifies to be approved in its entirety or be disapproved in its entirety, or if the Exception Request is for more than one Element, to be approved with respect to a subset of the Elements and disapproved with respect to the remainder of the Elements. The Recommendation shall set forth the basis on which the Regional Entity arrived at its Recommendation. With the Recommendation, the Regional Entity will also send NERC copies of the Exception Request Form and all other information considered by the Regional Entity in arriving at its Recommendation.

**5.2.4** The Regional Entity shall not recommend Disapproval of the Exception Request in whole or in part without first submitting the Exception Request for review to a Technical Review Panel and receiving its opinion, in accordance with section 5.3.

**5.2.5** NERC shall develop, and post on its web site, a reporting program and schedule pursuant to which Regional Entities will be required to submit to NERC periodic reports on the numbers, status and timing of their initial screenings and substantive reviews of Exception Requests.

### **5.3 Technical Review Panel**

Each Regional Entity shall establish provisions for a Technical Review Panel consisting of not less than three (3) individuals appointed by the Regional Entity senior executive (CEO, President, General Manager, etc.). Panel members shall comply with Subsection 7 of Section 403 of the NERC Rules of Procedure, shall not have participated in the review of the Exception Request, and shall have the required technical background to evaluate Exception Requests. When the Regional Entity intends pursuant to section 5.2.2 to issue a Recommendation of Disapproval, in whole or in part, the Technical Review Panel must first review the Regional Entity's proposed determinations and provide an opinion, a copy of which shall be provided to the Submitting Entity (and Owner if different) in the event the Regional Entity decides to disapprove the Exception Request. The Regional Entity will not be bound by the opinion of the Technical Review Panel, but such evaluation shall become part of the record associated with the Exception Request and shall be provided to NERC.

### **6.0 SUPPLEMENTATION OF AN EXCEPTION REQUEST PRIOR TO A RECOMMENDATION**

A Submitting Entity or Owner at any time prior to the Regional Entity issuing its Recommendation may supplement a pending Exception Request that is under review by a Regional Entity, either at the request of the Regional Entity or at the Submitting Entity's or Owner's own initiative, for the purpose of providing additional or revised Required Information. The Submitting Entity or Owner shall submit a written explanation of what Required Information is being added or revised and the purpose of the supplementation. Supplementing a pending Exception Request may, in the Regional Entity's discretion, reset the time period for the Regional Entity's initial screening or substantive review, as applicable, of the Exception Request.

### **7.0 APPEAL OF REJECTION OF AN EXCEPTION REQUEST**

The Submitting Entity may submit to the NERC Director of Compliance Operations, with a copy to the Regional Entity and Owner if different, information that demonstrates that the insufficiencies in an Exception Request Form identified in the notice of Rejection by the Regional Entity pursuant to section 5.1.5 are incorrect or otherwise do not warrant Rejection of the Exception Request, and that the Exception Request should be accepted and proceed to substantive review. A Submitting Entity's submission to NERC under this section 7.0 shall be in writing, shall provide the Exception Request which received the Rejection (using the identifier assigned to the Exception Request pursuant to section 5.1.2), and shall set forth a description of the errors that the Submitting Entity believes are in the notice of Rejection. The Submitting Entity's submission must demonstrate that it is eligible (in accordance with section 4.1) to submit the Exception Request and that all Required Information for the Exception Request has been provided. NERC will review the Submitting Entity's submission and the reports submitted by the Regional Entity or Regional Entities pursuant to section 5.1.5 with respect to the Exception Request, and if NERC determines that the Submitting Entity is eligible (in accordance with section 4.1) to submit the Exception Request, that all Required Information has been provided, and that the Exception Request should proceed to substantive review, NERC shall,



within forty-five (45) days after receiving the submission, issue a decision directing the Regional Entity to proceed to a substantive review of the Exception Request in accordance with section 5.2. NERC will send a written notice to the Submitting Entity, the Owner if different, and the Regional Entity stating that NERC either directs the Regional Entity to proceed to a substantive review or that NERC does not direct such a review.

## **8.0 APPROVAL OR DISAPPROVAL OF AN EXCEPTION REQUEST**

Following the date of the Regional Entity's Recommendation to NERC, a Submitting Entity or Owner, will have thirty (30) days to submit a comment in support of or opposition to the Recommendation. The NERC President shall appoint a team of no less than (3) three persons with the required technical background to evaluate Exception Requests to review the Recommendation and accompanying materials provided by the Regional Entity pursuant to section 5.2.3, the Technical Review Panel opinion (if any), and any comment submitted by the Submitting Entity or Owner. The members of the review team shall have no financial, contractual, employment or other interest in the Submitting Entity or Owner that would present a conflict of interest and shall be free of any conflicts of interest in accordance with NERC policies. This review shall be completed within ninety (90) days after NERC receives the Recommendation. NERC may choose to ask the Regional Entity, Submitting Entity and Owner, if different than the Submitting Entity, to appear at a NERC office for interviews or discussion regarding any questions. In lieu of appearing in person at a NERC office, appearances may be, upon the mutual agreement of NERC, the Regional Entity, the Submitting Entity and/or Owner, conducted by a conference call, teleconferencing, or webinar. By the end of the ninety-day review period, the team shall issue a proposed decision either to approve or to disapprove the Exception Request. If the Exception Request concerns more than one Element, the review team's proposed decision may approve the Exception Request in its entirety, disapprove the Exception Request in its entirety, or approve some portion of the Exception Request and disapprove the remaining portion. The proposed decision shall be in writing, shall be based on the team's independent consideration of the full record, and state the basis for the decision. If the proposed decision of the team was not unanimous, the dissenting team member may, if he or she wishes to do so, issue a minority report stating the dissenting member's reasons for disagreement with the proposed decision. Within thirty (30) days after the date of the review team's proposed decision, the NERC President shall issue a final written decision on the Exception Request on behalf of NERC. The final decision may adopt the proposed decision or modify the proposed decision, and may reach a different conclusion than the proposed decision as to whether the Exception Request is approved or disapproved. The final decision issued by the NERC President shall be the decision of NERC with respect to Approval or Disapproval of the Exception Request.

NERC shall provide to the Submitting Entity and to the Owner, if different, copies of any documents considered by the NERC review team in reaching its proposed decision, and any additional documents considered by the NERC President in reaching the final decision, that were not originally provided by, or have not previously been provided to, the Submitting Entity or Owner.

Documentation used to substantiate the decision related to an Exception Request shall be retained by NERC for a minimum of seven (7) years or as long as the Exception is in effect, whichever is longer, unless a different retention period is otherwise identified

## **9.0 CHALLENGES TO APPROVAL OR DISAPPROVAL OF EXCEPTION REQUESTS**

A Submitting Entity or Owner aggrieved by NERC's Approval or Disapproval of an Exception Request or termination of an Exception may, within thirty (30) days following the date of NERC's decision, challenge such determination pursuant to Section 1703 of the NERC Rules of Procedure. If neither a Submitting Entity nor Owner challenges, within such period, NERC's determination with respect to any Element to which the Exception Request or the Exception applies, such determination shall become effective with respect to such Element on the thirty-first day following the date of the NERC decision.

## **10.0 IMPLEMENTATION PERIOD FOR EXCEPTIONS**

### **10.1 Inclusion Exceptions**

In the case of an Element not included in the BES by application of the BES Definition but for which an Inclusion Exception is approved, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

### **10.2 Denials of Exception Requests for Exclusion**

(a) In the case of a newly-constructed or installed Element which is included in the BES by application of the BES Definition but for which an Exception Request for an Exclusion Exception was submitted at least twelve (12) months before commercial operation of the Element, but which Exception Request either is still pending or has been rejected or disapproved at the time of commercial operation, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly constructed or installed Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

(b) In the case of an Element which is included in the BES based on application of the current BES Definition but was not included in the BES under the BES Definition in effect immediately prior to the current BES Definition, and for which an Exception Request for an Exclusion Exception was submitted no more than twelve (12) months after the current BES

Definition became effective, but which Exception Request either is still pending or has been rejected or disapproved at the end of any applicable BES Definition implementation plan time period, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

## **11.0 TERMINATION OF AN APPROVED EXCEPTION**

**11.1** An Exception Request typically will be approved without a specified date of termination but will be subject to review to verify continuing justification for the Exception.

**11.2** Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any change of condition which would affect the basis stated by NERC in its decision pursuant to section 8.0 approving the Exception Request. NERC shall review such notification and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

**11.3** Submitting Entity(ies) shall certify<sup>3</sup> periodically to the appropriate Regional Entity that the basis for an Element being included or excluded in the BES through the Exception remains valid and in connection with each certification, shall provide the Regional Entity with any changes to Section I Required Information or Section II Required Information. The certification shall be due on the first day of the first quarter thirty-six (36) months after the date on which the Exception Request was approved and every thirty-six (36) months thereafter, as long as the Exception remains in effect. If such certification is not provided, the Exception is subject to termination ninety (90) days after the date the certification was due, and the Regional Entity shall send the Submitting Entity and NERC written notice of such termination.

**11.4** If the Regional Entity obtains information through means other than those described in sections 11.2 and 11.3 that indicates an Exception may no longer be warranted, the Regional Entity shall provide such information to NERC. NERC shall review the information and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

**11.5** If the Regional Entity's Recommendation following a substantive review pursuant to section 11.2 or 11.4 is that the Exception shall be terminated, NERC shall (i) issue a written notice to the Submitting Entity and Owner, if different, that the Exception is under review for possible termination, (ii) allow the Submitting Entity and/or Owner, as applicable, thirty (30)

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<sup>3</sup> The certification shall consider the effect on the basis for the Exception of changes such as Load growth and topological changes, as well as the effect on system limits and impacts as a result of the contingencies listed in Table 1 of each applicable NERC TPL Reliability Standard.

days from the date of the notice to submit comments or information to NERC to show that the Exception continues to be justified and should remain in effect, and (iii) cause the Recommendation to be reviewed in accordance with section 8.0 of this Appendix. If the conclusion of the review is that the Exception should be terminated, NERC shall send a written notice to the Submitting Entity and Owner, if different, stating that the Exception is terminated and the reasons for the termination. When an Element will be included in the BES as a result of the termination of an Exclusion Exception under this section, an implementation plan detailing the schedule for complying with any Reliability Standards applicable to the newly included Element will be developed in accordance with section 10.1 as if it were an Inclusion Exception.

**11.6** Upon request by the Regional Entity, the Submitting Entity(ies) and/or Owner if different shall provide within thirty (30) days the most recent versions of any Section III Required Information so requested.