



NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

March 16, 2009

TO: INDUSTRY STAKEHOLDERS

Ladies and Gentlemen:

**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.<sup>1</sup> In that order at paragraphs 157-222, FERC directed NERC to establish a procedure for the submission, review, audit, and approval of Technical Feasibility Exceptions (TFEs). The attached revisions to NERC’s Rules of Procedure sections 404.4, 404.9, CMEP, Attachment 2 – Hearing Procedures, P 1.1.1, and new Rules of Procedure section 412 and Appendix 4D – Procedure For Requesting And Receiving Technical Feasibility Exceptions To NERC Critical Infrastructure Protection Standards establish that procedure.

These proposed revisions to NERC’s Rules of Procedure are intended as a complement to the Cyber Security standards CIP-002-2 through CIP-009-2 that were posted for a 30-day pre-ballot review on March 3, 2009. The proposed rule changes are based on a white paper that was developed by NERC Staff and the Standard Drafting Team for the revisions to the CIP standards.

**Comments Due: April 30, 2009**

**Overview of Proposed Changes:**

The proposed Appendix 4D to the NERC Rules of Procedure, “Procedure for Requesting and Receiving Technical Feasibility Exception to NERC Critical Infrastructure Protection Standards,” provides the procedure by which a Responsible Entity to which the NERC CIP Standards apply may request and receive approval for an exception from the terms of certain Requirements of those standards on the grounds of technical feasibility or technical limitations. A Technical Feasibility Exception (TFE) is available where the text of the CIP Standard Requirement expressly provides either (i) that compliance with the terms of the Requirement is required where technically feasible, or (ii) that technical limitations may preclude compliance.

---

<sup>1</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, 122 FERC ¶ 61,040 (2008) at PP 157-202. In P 178 of Order No. 706, FERC “direct[ed] the ERO to develop a set of conditions or criteria that a responsible entity must follow when relying on the technical feasibility exception contained in specific Requirements of the CIP Reliability Standards.”

Under the proposed Appendix: (1) requests for TFEs will be submitted directly to NERC for review and approval or disapproval; (2) the TFE Request must include, among other things, proposed compensating measures and/or mitigating measures that the Responsible Entity will implement, an implementation schedule, and (except in certain circumstances) a proposed Expiration Date by which the Responsible Entity will achieve compliance with the Requirement without relying on the TFE; (3) the Responsible Entity will not be subject to findings of violation and imposition of penalties for noncompliance with the Requirement while the TFE Request is under substantive review by NERC (even if disapproved); and (4) if NERC approves the TFE Request, the Responsible Entity will be subject to compliance audits on its implementation of the compensating measures and/or mitigating measures, and will be required to submit periodic reports on its implementation of the compensating measures and/or mitigating measures and on the continuing need for the TFE, until its Expiration Date.

The proposed Appendix is intended to implement the authorization granted by FERC in Order No. 706 to allow TFEs to certain Requirements of the CIP Standards. In Order No. 706, FERC directed NERC to establish a procedure for the submission, review, audit, and approval of TFEs. However, as a result of careful consideration of the necessary steps in such a procedure, the resource requirements to implement it, and the evolution of the NERC and Regional Entity compliance monitoring and enforcement program, the proposed Appendix adopts different approaches in several respects than the procedure envisioned in Order No. 706.

Specifically, Order No. 706 specified a procedure that would not involve “pre-approval” of TFEs (because a pre-approval process could tax NERC and Regional Entity resources, delay implementation, and possibly create undue risks that sensitive information could be disclosed), but rather under which (1) a Responsible Entity would notify its Regional Entity that the Responsible Entity was relying on a TFE, and (2) the evaluation and approval (or disapproval) of the Responsible Entity’s claimed TFE would occur in the compliance audit process. Order No. 706 also specified that initial audits of TFEs should be expedited, including by moving the Responsible Entity’s next compliance audit to an earlier year than would otherwise be scheduled. Finally, Order No. 706 stated that Responsible Entities should be able to rely on a claimed TFE until formal approval.<sup>2</sup>

However, it became apparent during development of the detailed TFE Procedure that using the Regional Entity-led compliance audits as the vehicle for evaluation and approval of claimed TFEs is problematic in a number of respects. Therefore, the proposed TFE Procedure establishes a standalone review and approval process, to be conducted by NERC, for TFE Requests. Using the Regional Entity-led compliance audit process as the vehicle for evaluation and approval of claimed TFEs was viewed as problematic for a number of reasons:

- The compliance audit process, as it has been developed by NERC and the Regional Entities, focuses on evaluating the Responsible Entity’s compliance with a specific set of Requirements set forth in the Reliability Standards, based primarily on review of the Responsible Entity’s documentation and other hard evidence demonstrating compliance with the Requirements during the audit period. The process is intended to be objective

---

<sup>2</sup> Order No. 706 at PP 212-218.

and fact-based.<sup>3</sup> Evaluation and approval (or disapproval) of claimed TFEs and the associated mitigation and remediation plans will require more varied technical and operational analyses, which cannot be conducted against a set of template requirements, and is not suitable to be carried out in conjunction with the compliance audit process. Additionally, evaluations of claimed TFEs would likely extend the time required for a compliance audit.

- Review and evaluation of TFE Requests will require specialized expertise that is more efficiently and cost-effectively concentrated in NERC, rather than expecting each of the eight Regional Entities (as well as NERC) to develop such expertise (including the necessary staffing).
- Expediting review and approval of claimed TFEs by advancing the next compliance audit of each Responsible Entity claiming a TFE could conflict with other audit objectives. NERC's Rules of Procedure require that compliance audits of each Reliability Coordinator, Balancing Authority, and Transmission Operator be conducted at least every three years, and it is NERC's objective that compliance audits of all other Responsible Entities be conducted at least every six years. While at this point NERC does not know how many TFEs will be claimed by Responsible Entities, obviously, attempting to move the next scheduled compliance audit of each Responsible Entity claiming a TFE to the "head of the line" could wreak havoc with the other important compliance audit scheduling requirements and objectives, as well as strain Regional Entity auditing resources.
- Establishing a process in which all TFEs will be reviewed and approved/disapproved by NERC (rather than the eight Regional Entities) reduces the number of reviewers who need to review sensitive information. Further, since access to some types of information that must be reviewed to evaluate a claimed TFE may require special security clearances, NERC will be able to develop a team of reviewers with the necessary clearances, rather than requiring each Regional Entity to do so as well.

However, although the proposed TFE Procedure does not use the Regional Entity compliance audit process as the vehicle for reviewing, evaluating, and approving/disapproving TFE Requests, it does retain the other key elements of the process specified in Order No. 706. In particular, the TFE Procedure does not establish a "pre-approval" process, and a Responsible Entity claiming a TFE can rely on it until the TFE Request is approved or disapproved by NERC. Specifically, once NERC has performed an initial intake review of the Responsible Entity's TFE Request and determined it contains all required information, the Responsible Entity will not be subject to findings of violation or imposition of penalties for non-compliance with the CIP Standard Requirement that is the subject of the TFE Request during the period NERC conducts its substantive review of the TFE Request, *even if* NERC ultimately disapproves the TFE Request.<sup>4</sup> Further, the proposed TFE Request addresses another concern expressed in Order No.

---

<sup>3</sup> NERC and the Regional Entities have attempted to enhance the consistency, objectivity, and transparency of the compliance audit process through the development of documents such as the Reliability Standards Audit Worksheets.

<sup>4</sup> See Sections 5.1, 5.2 and 5.3 of proposed Appendix 4D.

706, by providing that various categories of Confidential Information (including Critical Energy Infrastructure Information) do not need to be submitted to NERC with the TFE Request, but rather can be made available for on-site review.

Under the proposed TFE Procedure, once NERC has approved a TFE Request, subsequent compliance audits by the Regional Entity will audit the Responsible Entity's implementation and maintenance of its compensating and mitigating measures, and ultimately its elimination of the need for the TFE, in accordance with the terms of the approved TFE Request. This is a much more straightforward application of the compliance audit process, involving review and verification of the Responsible Entity's proof of compliance with specific, established requirements.

Finally, the proposed TFE Procedure incorporates the other elements of the framework for TFEs to specific Requirements of the CIP Reliability Standards that were specified in Order No. 706. As summarized in P 222 of Order No. 706, these elements include identification of compensating or mitigating measures by the Responsible Entity, submission of a plan and timeline for eliminating use of the TFE unless appropriate justification otherwise is provided, regular review of whether the TFE continues to be justified, wide-area analysis by NERC of the impact of reliance on the TFE, and submission by NERC to the Commission of high-level, wide-area analyses regarding the effect of TFEs on the reliability of the Bulk-Power System. Each of these elements is built into proposed Appendix 4D.

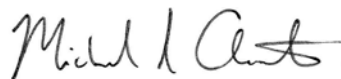
NERC is also proposing technical and conforming edits to other aspects of its Rules of Procedure to properly integrate the TFE Procedure.

**Comments Due: April 30, 2009**

NERC requests comments on the proposed revisions and additions to the Rules of Procedure, including proposed Appendix 4D. Comments are due by April 30, 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 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. NERC will also consult and file rule changes with applicable governmental authorities in Canada.

Sincerely,



Michael J. Assante  
Vice President and Chief Security Officer

## **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.

**FOR COMMENT**  
**3-16-09**

**North American Electric Reliability Corporation**

**PROCEDURE FOR REQUESTING AND RECEIVING**

**TECHNICAL FEASIBILITY EXCEPTIONS**

**TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS**

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

**Version 0**

**[Month, Day] 2009**

**TABLE OF CONTENTS**

<b>1.0.</b>	<b>INTRODUCTION</b>	1
1.1.	Purpose	1
1.2.	Authority	1
1.3.	Scope	1
<b>2.0.</b>	<b>DEFINITIONS</b>	2
<b>3.0.</b>	<b>BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION</b>	6
<b>4.0.</b>	<b>REQUIRED FORM AND CONTENTS OF A TFE REQUEST</b>	7
4.1	Separate Submission for Each TFE Request	7
4.2	Method of Submission; Number of Copies	7
4.3	Required Information to be Included in the TFE Request	7
4.4	Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information Included in Required Information	11
<b>5.0.</b>	<b>NERC REVIEW OF TFE REQUESTS</b>	11
5.1	Preliminary Review of TFE Request for Acceptance	11
5.2	Substantive Review of TFE Request for Approval or Disapproval	12
5.3	No Findings of Violations of Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request is Being Reviewed	13
5.4	Registry of Approved TFE Requests	13
<b>6.0</b>	<b>IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE</b>	14
<b>7.0</b>	<b>AMENDMENT OF A TFE REQUEST</b>	16
7.1	Amendment of a Pending TFE Request	16
7.2	Amendment of an Approved TFE Request	16



<b>8.0</b>	<b>COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE</b>	17
<b>9.0</b>	<b>REVOCAION OF AN APPROVED TFE REQUEST</b>	18
<b>10.0</b>	<b>HEARINGS AND APPEAL PROCESS FOR RESPONSIBLE ENTITY</b>	19
<b>11.0</b>	<b>CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION</b>	19
<b>12.0</b>	<b>ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES</b>	21
12.1	Contents of Annual Report	21
12.2	Due Date for Annual Reports	22
12.3	Annual Report to be a Public Document	22
12.4	Responsible Entities Must Cooperate in Preparation of Annual Report	22

**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 one of the NERC Critical Infrastructure Protection (CIP) Standards CIP-002 through CIP-009 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 TFE 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 0 of this Appendix, the Applicable Requirements are R2.4, R2.6, R3.1 and R3.2 of CIP-005-1, and R2.3, R4, R5.3, R6 and R6.3 of CIP-007-1, and any subsequent versions of these Requirements that 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 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*.

---

<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.

## 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 Bulk Electric System:** 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.

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

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

**2.10 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.]

**2.11 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.

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

**2.13 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.

**2.14 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.

**2.15 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 Electric 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 Electric System. The Compliance Registry is used to determine the Reliability Standards applicable to the Responsible Entity.

**2.16 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.

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

**2.18 Critical Assets:** Facilities, systems and equipment which, if destroyed, degraded or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System.

**2.19 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.

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

**2.21 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.

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

**2.23 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.

**2.24 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.

**2.25 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.

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

**2.27 Facility:** A set of electrical equipment that operates as a single Bulk Electric System Element (e.g., a line, a generator, a shunt compressor, transformer, etc.).

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

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

**2.30 Hearing Procedures:** Attachment 2 to the NERC CMEP.

**2.31 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.

**2.32 Notice of Revocation:** A notice issued by NERC to the Responsible Entity and the Applicable Regional 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.

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

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

**2.35 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.]

**2.36 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.]

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

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

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

**2.40 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.

**2.41 Revocation Investigation:** An investigation initiated and conducted by 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.

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

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

**2.44 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.

**2.45 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.

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

**2.47 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.

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

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

**2.50 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 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, is operationally infeasible, is precluded by technical limitations, 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
- (ii) 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
- (iii) would pose safety risks or issues that outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or
- (iv) 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
- (v) 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.

**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. Method of Submission; Number of Copies**

A TFE Request shall 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.]

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

**4.3.1.** A TFE Request shall contain the Required Information specified in this Section 4.3.1. Failure to provide all Required Information will result in rejection of the TFE Request as incomplete; provided, however, that, as specified in item (7) below, any Critical Energy Infrastructure Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information, or Voluminous Information that is part of the Required Information may be omitted from the TFE Request submitted by the Responsible Entity and made available for review by NERC at the Responsible Entity's offices, at the location of the Covered Asset, or at another appropriate location, pursuant to Section 4.4 of this Appendix.

1. Responsible Entity name.
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



## Technical Feasibility Exception Procedure – For Comment

NERC 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 Electric 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 Electric 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.

## Technical Feasibility Exception Procedure – For Comment

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.

If any Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and/or Voluminous Information is not provided with the TFE Request as submitted to NERC, the TFE Request shall include appropriate placeholder references to the omitted 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

---

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

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 NERC 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 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 NERC, 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 Electric 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.

---

<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.

#### **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 NERC, and subject to Section 4.4.2, the Responsible Entity must provide 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. 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 NERC (which may include contractors) who are Eligible Reviewers.

### **5.0 NERC REVIEW OF TFE REQUESTS**

#### **5.1. Preliminary Review of TFE Request for Acceptance**

**5.1.1.** Upon receipt of a TFE Request, NERC (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 has been provided.

**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 NERC (*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 NERC 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”).

---

<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).

**5.1.3.** If NERC determines the TFE Request is for an Applicable Requirement and contains all Required Information, NERC shall send a notice to the Responsible Entity and to the Regional Entity accepting the TFE Request as complete.

**5.1.4.** If NERC determines the TFE Request is (i) not for an Applicable Requirement, or (ii) does not contain all Required Information, NERC shall send a notice to the Responsible Entity and to the Regional Entity rejecting the TFE Request. If NERC rejects the TFE Request because not all Required Information was provided, NERC'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.

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

**5.2.1.** If NERC issues a notice that the TFE Request is accepted as complete, NERC shall proceed to conduct substantive review of the TFE Request to determine if it should be approved in accordance with Section 3.0 of this Appendix, or disapproved. As part of its substantive review, NERC may request access to and review any Confidential Information, Classified National Security Information, NRC Safeguards Information, Protected FOIA Information and Voluminous Information that was not provided with 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.

**5.2.2.** As part of its review of the TFE Request, NERC 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 Electric System within the applicable Region or such geographic area as NERC deems appropriate. In conducting this wide-area analysis, NERC shall seek such information from, and collaborate in conducting such studies with, one or more Regional Entities and other Responsible Entities (such as Reliability Coordinators, Balancing Authorities and Transmission Operators) as NERC 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 NERC deems appropriate for the analysis.

**5.2.3.** 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.

**5.2.4.** 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.

**5.2.5.** In its notice disapproving a TFE Request, NERC 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 by NERC. If the Responsible Entity submits a revised TFE Request to NERC incorporating the revisions to the TFE Request set forth in NERC’s notice of disapproval, then NERC 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 NERC 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 NERC as the Compliance Enforcement Authority, 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 NERC’s notice that the TFE Request is accepted as complete, to (i) the date of NERC’s notice that the TFE Request is approved or (ii) the Effective Date of NERC’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 NERC;
- (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 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 NERC and 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 NERC and 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 NERC, 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, NERC 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, 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.** NERC shall issue an acknowledgement notice to the Responsible Entity and the applicable Regional Entity that the periodic or other report has been received, but no other issuances shall be required from NERC 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 NERC 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 NERC and 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**

**7.1.1.** A Responsible Entity may at any time amend a pending TFE Request that is under review by NERC, 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.

**7.1.2.** Receipt of an amendment to a pending TFE Request may result in an extension of the period for the review currently being conducted by NERC, in accordance with Section 5.2.3 of this Appendix.

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

**7.2.1.** A Responsible Entity may submit to NERC 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.

## Technical Feasibility Exception Procedure – For Comment

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.** NERC 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 the applicable Regional Entity stating if the amendment filing is accepted as complete or rejected as incomplete. If NERC issues a notice that the amendment filing is accepted as complete, NERC 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 NERC 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 NERC.

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

**8.1.** Following approval of a Responsible Entity's TFE Request by NERC, 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.** 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.

**8.3** 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.** 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) 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) 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) 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** NERC shall initiate a Revocation Investigation by issuing a Notice of Revocation Investigation to the Responsible Entity and to the applicable Regional 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 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 NERC, with a response date which shall not be less than 30 days from the date of the Notice of Revocation Investigation.

**9.3.** During the course of the Revocation Investigation, 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, NERC shall issue a proposed Notice of Revocation to the Responsible Entity and to the Regional 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 NERC concerning the proposed Notice of Revocation.

**9.5.** Any Notice of Revocation issued by NERC shall state (i) the specific revocation action determined by 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 NERC a Mitigation Plan for achieving Strict Compliance with the Applicable Requirement. The Mitigation Plan shall be processed by NERC as the Compliance Enforcement Authority, 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 Request, or (iii) a Revocation Notice, may request a hearing before the CCC pursuant to Section 409 of the Rules of Procedure. The hearing shall be conducted and a decision rendered by the CCC in accordance with the procedures specified in Section 409 of the Rules of Procedure and the Hearing Procedures. The Responsible Entity may appeal an adverse final order of the CCC, and the appeal shall be heard and decided by the BOTCC, in accordance with Section 409 of the Rules of Procedure.

## **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

## Technical Feasibility Exception Procedure – For Comment

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 NERC pursuant to this Appendix;
- (iii) All requests for documents or information made by NERC pursuant to this Appendix;
- (iv) All submissions of documents and information by a Responsible Entity to NERC pursuant to this Appendix;
- (v) All post-approval reports submitted by a Responsible Entity to NERC pursuant to this Appendix;
- (vi) The registry of approved TFE Requests maintained by NERC;
- (vii) All wide-area analyses prepared by NERC pursuant to this Appendix;
- (viii) All correspondence, notes, drawings, drafts, work papers, electronic communications, reports and other documents generated by 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 NERC, and instead made available for review by NERC 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. NERC 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 NERC 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 Electric 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;

## Technical Feasibility Exception Procedure – For Comment

- (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 Electric 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.