

**Consideration of Comments on the NERC Rules of Procedure (ROP) Appendix 5C Bulk Electric System (BES) Exception Procedure — Project 2010-17**

The Project 2010-17 Definition of Bulk Electric System - Rules of Procedure Team thanks all commenters who submitted comments on the NERC ROP Appendix 5C BES Exception Procedure. The Exception process was posted for a 30-day public comment period from May 10, 2011 through June 10, 2011. The stakeholders were asked to provide feedback on the standards through a special Electronic Comment Form. There were 70 sets of comments, including comments from more than 176 different people from approximately 131 companies representing 10 of the 10 Industry Segments as shown in the table on the following pages.

[http://www.nerc.com/filez/standards/Rules\\_of\\_Procedure-BES.html](http://www.nerc.com/filez/standards/Rules_of_Procedure-BES.html)

If you feel that your comment has been overlooked, please let us know immediately. Our goal is to give every comment serious consideration in this process! If you feel there has been an error or omission, please contact the Vice President and Director of Standards, Herb Schrayshuen, at 609-452-8060 or at [herb.schrayshuen@nerc.net](mailto:herb.schrayshuen@nerc.net).

**Responses**

1. This draft provides in Section 1.1 that an entity unable to determine the status of an Element by application of the BES Definition may submit an Exception Request to obtain a determination of whether the Element is or is not within the BES. Do you agree? Please comment why or why not.

The BES ROP Team has determined that indeterminate status is outside the scope of the Exception process; determination of “in” or “out” is a prerequisite for an Exception of either. NERC and the Regional Entities are encouraged to work with industry to provide process and activities to assist entities in determining BES status through application of the definition.

2. The Procedure is intended to be least burdensome while requiring sufficient information to show how the request meets the Exception criteria of Section 3. Please comment as to how public the process should be? Should entities other than the RE, NERC, FERC, or Canadian Provincial authorities be allowed access to Exception-related information filed by an entity?

The BES ROP Team has determined that basic information on the existence of a Request should be made public. Specific identifiable information will be withheld from this posting (see Question #3). Each BA, TOP, RC, TP, and PC that has (or will have upon inclusion in the BES) the elements covered by an Exception Request within its scope of responsibility shall be simultaneously provided Section I and II information by the Submitting Entity at the time it makes the Request. Subject to any restrictions in applicable law, the aforementioned entities may be provided additional access to Section III information under applicable confidentiality provisions and as deemed necessary by the RE.

3. Section 4 contemplates an application in two parts; A and B. Do you agree that Part A information is appropriate for public posting on a region or NERC Website? If not, which pieces of information should be redacted?

Based on the stakeholder comments the BES ROP Team has made clarifying revisions to Section 4 of the Procedure to protect the confidentiality of information required under the Exception process. The purpose of the application is to provide the necessary information to make an informed decision regarding individual Exception Requests.

Section 4.3 was reorganized into three groupings of data to be supplied under an Exception Request. Section 4.5.1 information is considered by most responders as appropriate for a public posting.

Sections 4.5.2 and 4.5.3 provide data which nearly all responders felt should be kept confidential as it may be considered confidential by the Submitting Entity and therefore exempt from disclosure or public posting.

4. Section 4.1 allows for multiple, similar elements to be separately identified but submitted in a single request or multiple entities to join in a single Request for Exception. What should be the scope of the Elements that can be contained in a single Request?

The BES ROP Team has decided the scope of the Exception Request covers the terminal connections of the Element or set of Elements as identified in the Exception Request. This should alleviate some concerns that a Request will require inordinate detail. Elements of similar characteristics or design applied in a substantially similar situation (generators, transformers, Facilities, etc.) can be combined in a single Request for administrative efficiency. In any case, however, each generator, transformer, Facility, etc., will be subjected to review and the record will developed on that basis.

5. The Procedure envisions (Sections 1.1 and 4.1) that, in addition to the owner for an element, any applicable Regional Entity, Planning Coordinator, Reliability Coordinator or Balancing Authority may submit an Exception Request for an Element. Do you agree that third parties should be able to request an Exception for an Element owned by another (whether or not the owner is on the Compliance Registry)? If so, please comment on which functional registrations are most appropriate to be allowed to do this.

The BES ROP Team has decided that the Owner or any of the RE, BA, TOP, RC, TP, and PC that has (or will have upon inclusion in the BES) the Element(s) covered by an Exception Request within its scope of responsibility may submit requests for inclusion of an Element owned by a Registered Entity. Only the Owner or the applicable RE may submit a Request for exclusion of an Element. With respect to Elements owned by unregistered entities, the RE must submit an inclusion Request to NERC for approval prior to applying the Registration process.

6. With respect to entities that may be impacted by an Exception decision, the Procedure allows for multiple entities to join together in a single Request. Should third parties be allowed to intervene as well? (For example, if Entity A submits an Exception Request for Element X to its Regional Entity for exclusion from the BES, but Entity B which is adjacent (electrically) to Entity A does not agree that Element X should be excluded, what options should be available to Entity B? What if Entity A and B are in different Regions?) Please comment on what factors should be considered.

Many of the comments have expressed concerns that the Exception Procedure should be a simple one that can be processed without any delays. The BES ROP Team believes that if there were no limitation on interventions, the Exception process may not be effective and efficient and could be lengthy. Each of the BA, TOP, RC, TP, and PC that has (or will have upon inclusion in the BES) the elements covered by an Exception Request within its scope of responsibility shall be simultaneously provided Section 4.5.1 and 4.5.2 information by the Submitting Entity at the time it makes the Request so that such entities will have the opportunity to be aware of an Exception Request. The team believes that other parties/entities, including relevant regulatory authorities within their jurisdiction, can express their concern(s) or endorsement(s) to any or all of the entities listed above.

7. Section 5.1.5 considers requests that are rejected as incomplete or inappropriate. Does this provide sufficient access to the process? Please comment as to what additional recourse is available to an entity that is still unable to “cure” a rejected Exception Request.

The BES ROP Team has decided that before a Regional Entity rejects a Request as insufficient, 1) it shall inform the Submitting Entity of the information needed to make the Request sufficient and 2) if the Submitting Entity does not supply the requested additional information, the Regional Entity shall submit the Request to a technical review panel for evaluation of the Request for sufficiency. The Regional Entity will not be bound by the evaluation of the panel but such evaluation shall become part of the record.

8. Section 8.0 describes NERC’s Approval or Disapproval of an Exception Request. Is this NERC review defined sufficiently? Please comment where this may be streamlined (for example, other methods besides panel review of every Request).

The BES ROP Team appreciates the comments received. Upon review and consideration of the suggestions to clarify and streamline the NERC Approval/Disapproval process, the following changes will be made to the draft Exception Procedure.

- The NERC Exception Approval/Disapproval review process will be better defined through a set of diagrams that will be appended to the Exception Procedures to illustrate the process, including the time frames.
- The scope of the record for review will be clarified, as will be the independence of the NERC review process. The last two sentences of the first paragraph of Section 8.0 will be revised to read: “The decision shall be in writing, shall be based on the panel’s independent consideration of the full record, and shall identify the basis for the decision. If the decision of the team was not unanimous, the writing shall note that fact and include the basis on which the minority disagreed.”
- With respect to the scope of Requests for Exceptions, the BES ROP Team considers the scope of the Element which is the subject of the

Exception Request to be defined by the Element's terminal connections as identified in the Exception Request.

- Section 8 will be revised to include a conference call, teleconferencing, or webinar option in addition to a party's physical attendance at NERC meetings to review materials pertaining to Approval/Disapproval decisions.
- Section 8 will be revised to include consideration of third party or neighboring entities' concerns in Exception Approval/Disapproval decisions.
- Any timeframe inconsistencies will be corrected in the next draft.
- Entities will be provided sufficient time to develop and file documentation and the Regional Entities and NERC will be required to respond in a timely manner.

After consideration of the appeal options available under the current NERC Rules of Procedure, the ROP Team has concluded that Section 1700 provides the best framework for appeals of Exception decisions.

9. What should be the status of an Element during the pendency of the Request process?

The majority of comments indicated that during the pendency of the Request the status of the Element that is the subject of the Exception Procedure should remain as it was prior to initiation of the process. The BES ROP Team agrees with this approach and has formulated language for the Procedure that addresses the status of the Element accordingly.

In addition, many commentors wanted an implementation period after the Exception Procedure is completed to allow time for the Submitting Entity to come into compliance with any NERC Standards that would apply to the Element in question. The BES ROP Team has drafted language to address this issue.

Some commentors were concerned about compliance during the pendency of the Request. The BES ROP Team feels that compliance would also be status quo, i.e., if the Element in question is subject by definition to NERC Standards, it would remain so during the Exception process and vice versa. Compliance monitoring and enforcement and organization registration and certification are addressed in other sections of the NERC Rules of Procedure and therefore do not require language to be added to this Procedure.

Finally, some commentors wanted the Regional Entity recommendation to NERC to be "binding" during the remainder of the process. The BES ROP Team feels that this could result in additional uncertainty and possibly unnecessary compliance expense, especially for Submitting Entities that request exclusion of an included Element.

10. Do you have any other comments not covered above?

The BES ROP Team agrees with many of the language, typographical, and structural comments provided. Additionally, many commenters provided specific language for greater clarity around due process, timing, and expectations that we will incorporate into the next draft for posting. Regarding what “lists” of facilities the process envisions the ERO maintaining, the ROP team has decided that only the record of facilities submitted for application of the Exception process will be maintained. Lists of “radial” and “distribution” facilities determined by application of the definition would be burdensome to acquire and maintain over time and outside the scope of the Commission-approved Exception process. These facilities already are available to the ERO for inspection through the CMEP and Registration processes and the record of their classification is best maintained with the asset Owner.