

Compliance Application Notice – 0030

Attestations

Posted: December 9, 2011

Primary Interest Groups

Compliance Enforcement Authority (CEA)¹

NERC

Regional Entity

Registered Entity

Issue: When is an attestation suitable evidence of compliance?

For the purpose of aiding a CEA, this CAN provides instruction for assessing the appropriate situations and uses of attestations as evidence of compliance with a reliability standard requirement.

Background

An attestation is a written statement of fact, voluntarily made under an oath or affirmation and signed by the author. In certain situations where documentation is not available, attestations may be provided to CEAs to demonstrate compliance. As with any other piece of evidence, the persuasive value of an attestation will be determined by the CEAs reviewing it.

Compliance Application

A CEA is not to accept an attestation as a substitute for the registered entity's obligation to have maintained adequate records. However, there may be circumstances in which a written attestation may be accepted as evidence of compliance, particularly if corroborating evidence is available.

CEAs are instructed to accept attestations. Corroborating evidence as outlined in the three examples below is preferred. If no corroborating evidence is available, CEAs are not precluded from accepting an attestation but must evaluate the facts and circumstances to determine whether the attestation by itself constitutes sufficient evidence. CEAs are also instructed to accept attestations when an attestation is required or acceptable pursuant to a standard or a compliance communication, such as another CAN or Bulletin. In every case in which an attestation is accepted, CEAs are to evaluate the persuasive value of an attestation depending on the quality and specificity of the statements, and any corroborating evidence.

¹ Compliance Enforcement Authorities include ERO auditors, investigators, enforcement personnel or any person authorized to assess issues of concern, potential non-compliance, and possible, alleged or confirmed violations of NERC Reliability Standard and requirements.

1. A CEA is instructed to accept an attestation in the case that evidence is not available or is not complete due to a force majeure event including, but not limited to, natural disasters and computer malfunctions.
2. CEAs are instructed to accept attestations in support of an entity's position that an event or situation did not occur. An example of this scenario is if an entity is to perform a duty upon receiving communication. In order to support the entity's position that it did not receive any communication that would require performance, a CEA is to look for evidence such as a blank log book, showing that no communication occurred, and/or statements from entities to support the entity's attestation.
3. Finally, a CEA is instructed to accept an attestation in situations in which the evidence retention period for audit purposes is longer than the document retention period in a standard, consistent with Bulletin #2011-001, Data Retention.²

Effective Period for CAN

This CAN is effective upon posting as final on the NERC Web site, and is to be used by CEAs to assess compliance from the posting date forward, regardless of the start date of any non-compliance or Possible Violation.

For any enforcement action in process and for audits that have been initiated,³ a CEA will apply the appropriate discretion, including consideration of the specific facts and circumstances of the non-compliance, in determining whether to assess compliance pursuant to this CAN.

Evidence of Compliance

A CEA is to assess the following, in addition to an attestation, to obtain reasonable assurance of the entity's compliance (as indicated above; however, if no corroborating evidence is available, a CEA must evaluate the facts and circumstances to determine whether the attestation by itself constitutes sufficient evidence):

1. For incomplete records, a CEA is to look for applicable records in a registered entity's possession.
2. To support a position that an event did not occur, a CEA is to look for:
 - a. Log books or records (either hardcopy or electronic) that show a blank entry or lack of an entry,

²See Public Notice – NERC Compliance Process Bulletin #2011-001, Data Retention, located at <http://www.nerc.com/page.php?cid=3|22>.

³"Initiated" means that a registered entity has received notification of the upcoming audit.

- b. A documented process to demonstrate how an event or request would have been recorded,
 - c. Additional statements from other internal operating personnel or from other entities that have actual knowledge of the event, or
 - d. Other corroborating evidence to show that an event did not occur.
3. In the event that the evidence retention period for audit purposes is longer than the document retention period in a standard, a CEA is instructed to look for the type of evidence outlined in Bulletin #2011-001, Data Retention.⁴

CEAs may accept attestations based on the sample attestation form that is attached to this CAN, or other forms of attestation or affidavit documents provided by registered entities. The attached form is meant to be used as a guideline and is not a mandatory format for submitting an attestation to an auditor.

For more information please contact:

Michael Moon
Director of Compliance Operations
michael.moon@nerc.net
404-446-2567

Valerie Agnew
Manager of Interface and Outreach
valerie.agnew@nerc.net
404-446-2566

Ben Engelby
Senior Compliance Interface and Outreach Specialist
ben.engelby@nerc.net
404-446-2578

This document is designed to convey compliance monitoring instruction to achieve a measure of consistency among auditors and Compliance Enforcement Authorities. It is not intended to establish new requirements under NERC's Reliability Standards or to modify the requirements in any existing NERC Reliability Standard. Compliance will continue to be assessed based on language in the currently enforceable NERC Reliability Standards. This document is not intended to define the exclusive method an entity must use to comply with a particular standard or requirement, or foreclose a registered entity's demonstration by alternative means that it has complied with the language and intent of the standard or requirement, taking into account the facts and circumstances of a particular registered entity. Implementation of information in this document is not a substitute for compliance with requirements in NERC's Reliability Standards.

⁴See Public Notice – NERC Compliance Process Bulletin #2011-001, Data Retention, located at <http://www.nerc.com/page.php?cid=3|22>.

(Sample Attestation Form)

[Add Registered Entity Letterhead]

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

County of:

City of:

ATTESTATION

I, [NAME], certify that I am [TITLE], [REGISTERED ENTITY]; that I am authorized to execute this attestation; that I am familiar with the [REGISTERED ENTITY]'s attached statements; that, to the best of my information, knowledge and belief, the statements and supporting documents appended to this attestation are true and correct as of the date of signing.

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