

NERC Compliance Process Bulletin #2011-005

Transfer of Assets and Deployment of New Assets

Version 1.0

September 15, 2011 | Public Process Announcement

Background

This process bulletin has been issued to clarify the effects of Bulk Power System (BPS) asset transfers or deployment of new BPS assets as they relate to a registered entity's responsibility for compliance with the applicable NERC Reliability Standards. Questions have been raised regarding registration and compliance issues that arise in connection with these transactions. This bulletin addresses guidance for transfers from one entity (Seller) to another entity (Buyer) and for deployments of new assets.

Appendix 5B of the NERC Rules of Procedure (ROP) contains the Statement of Compliance Registry Criteria (Registry Criteria). That document outlines the criteria for including entities in the NERC Compliance Registry (NCR).¹ Entities listed in the NCR are monitored for and responsible for compliance with applicable mandatory Reliability Standards.

In accordance with ROP Section 400 *Compliance Enforcement* and ROP Section 500 *Organization Registration and Certification* all owners, operators and users of the BPS who meet the criteria set forth in the Registry Criteria must be registered with NERC. NERC notifies entities of their registration status in accordance with ROP Section 500, subsection 1.3.1. Registered entities are encouraged to structure their compliance programs to ensure compliance as of the registration date.

NCR Changes In Connection with a Transfer of Existing Assets or Deployment of New Assets

When a transfer of an asset occurs or an entity deploys a new asset this may require a change to the NCR so that the responsibility for compliance with those standards that may apply as a result of an entity's ownership or operation of a specific asset can be properly identified. In connection with the obligation to register for the appropriate functions under the NERC ROP, a Seller and Buyer or an entity responsible for a new asset must communicate these changes to the applicable Regional Entity.²

¹ Statement of Compliance Registry Criteria (http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf)

² When an entity changes name or corporate form only, this change is treated as an administrative change to the NCR and does not result in a change in responsibility with respect to any standards or assets. Responsibility for noncompliance in that case extends from the first date of registration.

General Guidance for Sellers and Buyers of Existing Assets

Seller

A Seller is encouraged to coordinate with the Buyer so that the Buyer is properly registered as of the intended date of the transfer, as the Seller will remain responsible for compliance with relevant standards that may relate to the particular asset until it is deactivated from the NCR for the applicable function(s) and the buyer is subject to compliance responsibility. The Seller will remain on the NCR until any outstanding settlement and enforcement issues associated with the asset in question are resolved.

Buyer

A Buyer should be aware that when a transfer of asset occurs and the Buyer is registered for a function that relates to the asset in question, the Buyer will become the party responsible for compliance with relevant standards from the date the buyer is registered.³ A Buyer may also become responsible for the completion of milestones for mitigation plans that relate to the asset.

A few possible scenarios:

An entity acquires, directly or indirectly, all of the assets that were previously owned and operated by a registered entity. In that case, only the name of the registered entity will be changed in the NCR and the new entity will be responsible for any instances of noncompliance with NERC Reliability Standards associated with the assets (including past periods). The transfer of all assets to a new company or a new corporate form cannot be used to “reset” the reliability clock of existing assets.

An entity acquires, directly or indirectly, a portion of the assets that were previously owned and operated by a registered entity. As indicated above, the buyer will be responsible for any instances of noncompliance with NERC Reliability Standards associated with the assets from the time of the buyer’s registration. In the event that new issues of noncompliance are identified that relate to past periods and extend beyond the time of the buyer’s registration, the entities may be assessed separate violations for their respective periods of responsibility.

In either case, if there are pending noncompliance issues being processed at the time of the transfer of assets, the seller may not be deactivated from the NCR until all pending noncompliance issues are fully processed. The seller would also not be deactivated if its ownership and operation of other assets not included in the transfer required registration under the NERC Rules of Procedure.

Entities are encouraged to work with the applicable Regional Entity to make any necessary changes to the NCR in a timely manner. Although the Regional Entity and NERC will strive to implement changes to the NCR to reflect the parties’ desired allocation of responsibilities after a transfer of assets, the Regional Entity and NERC will continue to monitor compliance and enforce standards with respect to either party pursuant to the ROP.

³ Unless otherwise provided for in a standard.

General Guidance for an Entity Deploying a New Asset

During the planning stages of deploying a new asset, entities are encouraged to work with the applicable Regional Entity to ensure that registration for relevant functions is effective as of the deployment of a new asset. As discussed above, if an entity performs a function, as defined in the Statement of Compliance Registry Criteria document as an owner, operator or user of the BPS, that entity must be registered on the NCR accordingly. As such, for example, Generator Owners and Generator Operators should be registered on the NCR once they are connected and are providing power to the interconnected system. Regional Entities are encouraged to coordinate with NERC to ensure that the registration date coincides with the date of connection in such cases.

Conclusion

In conclusion, registered entities must be aware of registration and compliance responsibilities when assuming control of an asset. NERC strongly encourages open communication among registered entities and the applicable Regional Entity. Additionally, NERC has provided registration guidance in NERC Compliance Public Bulletin #2010-004 *Guidance for Entities that Delegate Reliability Tasks to a Third Party Entity*.⁴

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⁴ NERC Compliance Public Bulletin #2010-004 is available at: <http://www.nerc.com/files/2010-004%20v1%200.pdf>.